

CHAPTER XIV. TRAFFIC

Article 1. Standard Traffic Ordinance

Article 2. Local Traffic Regulations

Article 3. Abandoned Motor Vehicles on Public Property

ARTICLE 1. STANDARD TRAFFIC ORDINANCE

- Revised
Sept 24,
2007*
- 14-101. INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Cunningham, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 1993, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said standard ordinance shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Cunningham, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. (Code 1993)
- 14-102. SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES. (a) An ordinance traffic infraction is a violation of any section of this article that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. Supp. 8-2118.
- (b) All traffic violations which are included within this article, and which are not ordinance traffic infractions as defined in subsection (a) of this section, shall be considered traffic offenses.
- (Code 1993)
- 14-103. PENALTY FOR SCHEDULED FINES. The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than \$10 nor more than \$30, except for speeding which shall not be less than \$10 nor more than \$500. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed \$500. (Code 1993)

ARTICLE 2. LOCAL TRAFFIC REGULATIONS

- 14-201. **TRAFFIC CONTROL DEVICES AND MARKINGS.** The Standard Traffic Ordinance as adopted is hereby modified by adding thereto the following:
The governing body may, by resolution, establish and fix the location of such traffic control devices as may be deemed necessary to guide and warn traffic under the provisions of this chapter, other traffic ordinances and the state laws. The city shall place and maintain such traffic control signs, signals and devices when and as may be required by the authority of the governing body to make effective the provisions of this chapter and other ordinances for the regulation of traffic. Any official traffic control device placed pursuant to this section shall be marked and labelled on a map of the City of Cunningham for the purpose of displaying all such traffic control devices and shall be filed with the city clerk to be open to inspection and available to the public at all reasonable hours of business. (Code 1993)
- 14-202. **THROUGH STREETS.** When signs are erected giving notice thereof, drivers of vehicles shall stop as the sign directs at every intersection before entering any of the following streets or parts of streets, which are hereby designated through streets:
(a) First Street (U.S. 54);
(b) Douglas Street from Fourth Street to First Street;
(c) Henderson Street from Fourth Street to First Street;
(d) Main Street from Fourth Street to First Street;
(e) Valley Street from Fourth Street to First Street.
(Code 1969, 10-202)
- 14-203. **STOP INTERSECTIONS.** When signs are erected giving notice thereof, drivers of vehicles shall stop as the sign directs as follows:
(a) All traffic entering Main Street from the west from Fourth to First Street shall stop before entering;
(b) All traffic entering Main Street from the east from Fourth to First Street shall stop before entering.
(Code 1969, 10-203)
- 14-204. **YIELD RIGHT OF WAY; SIGN LOCATIONS.** When signs are erected giving notice thereof, drivers of vehicles shall yield the right-of-way as follows:
(a) All traffic entering Elliott Street from Florence Street shall yield the right-of-way to traffic on Elliott Street;
(b) All traffic entering Elliott Street from Estella Street shall yield the right-of-way to traffic on Elliott Street.
(Code 1969, 10-204)
- 14-205. **SPEED LIMIT; FIRST STREET (K-54).** The State Highway Commission having determined upon the basis of an engineering and traffic investigation

that a reasonable and safe speed limit upon First Street, a connecting link in the state highway system, should be 30 miles per hour, where posted, and having erected appropriate signs giving notice thereof, the speed limit on First Street is hereby set at 30 miles per hour where posted, and 25 miles per hour where posted; the speed limit in the business district and the residential areas of the city shall be 20 miles per hour, except where otherwise posted or within school zones, and except for First Street. (Code 1969, 10-206)

14-206. ANGLE PARKING. Angle parking at the angle indicted on the curb, sidewalk or pavement or by signs is hereby permitted on the following streets: On Main Street between First Street and Fourth Street including both First Street and Fourth Street. (Coded 1969, 10-205; Ord. 240)

14-207. TRUCK PARKING; WHEN UNLAWFUL. (a) No person shall park any vehicle on First Street (commonly known as Highway 54) in the city between the intersections of Douglas and Dresden Street at any time of any day; provided, however, that the prohibition herein contained shall not apply to vehicles designed for passenger use only or to trucks not larger than 3/4 ton.

(b) No trucks in excess of 10,000 pounds shall be parked at any time on a residential street, except for loading and unloading.

(c) No vehicle carrying anhydrous ammonia in amounts in excess of 150 gallons shall be parked at any time within a residential area. (Ord. 219, Sec. 1; Code 1993)

ARTICLE 3. ABANDONED MOTOR VEHICLES ON PUBLIC PROPERTY

14-301. DEFINITIONS. For the purpose of this article, the following terms, phrases, words and their derivations shall have the following meanings:

(a) Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. Where the word "highway" or the word "street" is used in this article, it means street, avenue, boulevard, thoroughfare, alley, and other public way for vehicular travel by whatever name, unless the context clearly indicates otherwise.

(b) Motor Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively on stationary rails or tracks.

(c) Owner or Occupant. A party having fee simple title in the real property, or a party having a leasehold interest in the real property, or a party who is the beneficiary of a private easement for the purpose of egress or ingress to or from said real property. (Code 1993)

14-302. IMPOUNDING VEHICLES. The police department may cause to be impounded:

(a) Any motor vehicle unlawfully parked on a highway in violation of any provision of a city ordinance which prohibits the parking of vehicles at the place where or time when the impounded motor vehicle is found.

(b) Any motor vehicle that has been abandoned and left on a highway or other property open to use by the public for a period in excess of 48 hours pursuant to K.S.A. 8-1102.

(c) Any vehicle which interferes with public highway operations.

(d) Any motor vehicle which:

(1) Is subject to removal pursuant to K.S.A. 8-1570, or 8-1102, or

(2) Is subject to seizure and forfeiture under the laws of the state, or

(3) Is subject to being held for use as evidence in a criminal trial.

(e) Any motor vehicle, the continued presence of which, because of the physical location or condition of the motor vehicle, poses a danger to the public safety or to the motor vehicle.

(f) Any motor vehicle which has been abandoned or parked on any real property, other than public property or property open to use by the public, may be moved and disposed of in accordance with the terms of this article by the police department upon the request of the owner or occupant of such real property. The real property referred to herein shall not be owned or leased by the person who abandons or parks said vehicle or by the owner or lessee of such vehicle. The city or any person, partnership, corporation or their agent conducting a business enterprise for the purpose of towing vehicles which removes such vehicle from the real property at the request of the police department shall have a possessory lien on such vehicle for the cost incurred in removing, towing and storing such vehicle. For purposes of this article, common areas shall be construed not to mean public property or property open to the public. (Ord. 243, Sec. 1; Code 1993)

14-303. SAME. The police department may authorize storage of such impounded motor vehicles at any location, public or private, which is zoned for the storage of motor vehicles. (Code 1993)

14-304. NOTICE OF IMPOUNDMENT; STORAGE OF VEHICLE. (a) When Owner Present. When the police department intends to impound a motor vehicle pursuant to section 14-302 and the owner of the motor vehicle is then present, the police department shall before the motor vehicle is removed, provide the owner with a notice, in the form prescribed by the police department that the motor vehicle is being impounded, that towing and storage charges will be assessed against the impounded motor vehicle, that the owner may claim and regain possession of the impounded motor vehicle at the location to which it is being removed for storage without prepayment of towing and storage charges and that the owner may request a hearing as to the propriety of the impoundment and as to the amount of and the owner's liability for the towing

and storage charges. The notice shall also state the location where the impounded motor vehicle will be stored and the place where the owner may make his or her request for the hearing. The notice shall also state, in prominent language, that failure by the owner to request a hearing within five days after receipt of the notice may act as a waiver of his or her right to a hearing and that this may result in the placing of a lien against the motor vehicle for the towing and storage charges without further notice to the owner; and that the motor vehicle be sold at public auction to the highest bidder for cash after 15 days from the date of the mailing of the notice. The owner of the impounded motor vehicle shall sign the notice as an acknowledgment that he or she has received a copy of the notice and a copy of the notice shall be provided to the owner.

(b) When Owner not Present. (1) When the police department impounds and removes a motor vehicle pursuant to section 14-302(a) and the owner of the motor vehicle is not present at the time of the impoundment, the police department shall, if such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with said division, mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall be in the form prescribed by the police department containing the same information as required by section 14-304(a). The police department shall use reasonable diligence in determining the title owner, or if from a non-title state, the registered owner, of the vehicle, and shall inquire by mail of the office of the register of deeds of the county in which the title shows the owner resides, if registered in this state, as to whether there are any lienholders of record. If the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed to be a resident of the state whose whereabouts are unknown and service shall be made on the Secretary of State as provided in K.S.A. 8-401.

If the owner does not reside in the state, as appears from the motor vehicle registration and the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed a nonresident of the state and service shall be made on the Secretary of State as provided in K.S.A. 8-401.

(c) Failure or Refusal to Sign Notice. If any person required by this section to sign a notice of impoundment willfully fails or refuses to do so, or if such person cannot be found, the police department shall note this fact on the face of the notice, which shall constitute prima facie evidence of delivery or service of notice as required by this section.

(Code 1993)

14-305. IMPOUNDMENT AFTER REQUEST TO LEAVE MOTOR VEHICLE. In all cases wherein the owner or operator of a motor vehicle which is on a public

street has requested that the motor vehicle be left unattended at that location, in lieu of impoundment of the motor vehicle pursuant to section 14-302, the police department may honor said request for a period of time not exceeding 24 hours, after which time the motor vehicle shall either be removed from the location by the owner or operator or be impounded by the police department pursuant to section 14-304. The police department shall be immune from liability for any damage, loss or destruction of the motor vehicle occasioned by its being left unattended pursuant to the request of the owner or operator thereof, in lieu of impoundment. Nothing in this section shall be construed to limit the authority of the police department to order the removal of a motor vehicle by its owner or operator or to impound a motor vehicle pursuant to section 14-304 at any time whenever in his or her judgment the presence of the unattended motor vehicle constitutes a danger to the public safety. (Code 1993)

14-306. **RELEASE OF MOTOR VEHICLE FROM IMPOUNDMENT.** (a) Generally. Unless the vehicle is impounded pursuant to section 14-302(b) herein, the owner of an impounded motor vehicle may secure the release of the motor vehicle from impoundment upon requesting such release and presenting proof of ownership satisfactory to the custodian of the place where the motor vehicle is stored. If the custodian is satisfied that the person making the request is the owner or his or her authorized agent, he or she shall release the motor vehicle to the owner or his or her agent. Nothing in the preceding sentence shall preclude the owner of the impounded motor vehicle or his or her agent from paying any towing and storage charges that may be assessed against the motor vehicle, but neither the police department nor the custodian of the storage space may require payment of any towing or storage charges as a condition precedent to such release. At the same time as the owner or his or her agent requests release of the impounded motor vehicle, and if such request is made with 40 days after the owner receives a copy of the notice of impoundment, the police department shall provide him or her an opportunity to make a request for a hearing on the propriety of the impoundment and on the amount and his or her liability for the towing and storage charges occasioned by the impoundment; provided, that if the owner or his or her agent requests release of the impounded motor vehicle more than 40 days after the owner receives a copy of the notice of impoundment, no hearing may be requested on the impoundment or on the towing and storage charges and the owner shall be conclusively presumed to have consented to the impoundment and to the amount of and his or her liability for the towing and storage charges.

(b) Security for Payment of Charges. If the ownership of the impounded motor vehicle is evidenced by a title certificate issued by the Kansas Department of Highway Safety and Motor Vehicles, the owner or his or her agent may secure the release of the motor vehicle from impoundment without the payment of any towing or storage charges or the deposit of any security for the payment thereof. If the ownership of the impounded motor vehicle is

evidenced by a foreign title instrument, or if the jurisdiction in which title is recorded is not evidenced from the document establishing ownership, the owner or his or her agent, before the custodian of the place where the motor vehicle is stored authorizes release of the motor vehicle from impoundment, shall deposit with the custodian cash in the amount of the towing and storage charges to the date of the request. If the owner or his or her agent refuses to provide the cash deposit, the custodian shall not authorize release of the impounded motor vehicle but if the request is timely made, a date shall be set for the hearing on the impoundment and charges.
(Code 1993)

- 14-307. HEARING. If the owner of an impounded motor vehicle or his or her agent timely requests the release of the motor vehicle from impoundment and a hearing on the impoundment and charges, as provided in section 14-306, a date shall be set, not more than five days after the date of request, for the hearing. The city attorney shall provide a hearing examiner to conduct the hearings required by this section. At the hearing, the owner, his or her agent, or his or her attorney shall be afforded an opportunity to present, by oral testimony or documentary evidence, his or her objections to (a) the impoundment of the motor vehicle and (b) (1) the amount of the towing and storage charges and (2) his or her liability for the payment thereof. If the owner or his or her agent requested the hearing more than five days but not more than 40 days after the owner received a copy of the notice of impoundment, the owner, his or her agent or his or her attorney shall be required at the hearing, as a condition precedent to the presentation of any objections by the owner, to show good cause for the delay in making the request more than five days after the owner received a copy of the notice of impoundment: if good cause cannot be shown, the hearing officer shall dismiss the hearing and make the finding stated in subsection (b) below; otherwise, the hearing examiner shall proceed to hear the owner's objections. At the conclusion of the hearing on the owner's objections, the hearing examiner shall render his or her decision if the hearing examiner:
- (a) Finds that the impoundment was improper, he or she shall:
 - (1) Find that the owner is not liable for any towing or storage charges occasioned by the impoundment and
 - (2) Determine whether and to what extent the city shall be the expense of the towing and storage charges; or
 - (b) Finds that the impoundment was proper, he or she shall establish:
 - (1) The amount of the towing and storage charges to be assessed against the impounded motor vehicle and
 - (2) The extent of the liability of the owner for payment of the towing and storage charges so established. The decision of the hearing examiner shall be final, and a copy of the decision shall be furnished to the owner of the impounded motor vehicle, to the custodian of the place where the motor vehicle is stored and to the city attorney.

In the event that the impoundment was pursuant to K.S.A. 8-1102(b), the owner or occupant of the real property upon which the abandoned vehicle was located shall not be assessed the costs of towing and storage of the vehicle. Further, nothing within this article shall be construed to modify or effect the validity of the possessory lien of the person removing such vehicle from the real property established by K.S.A. 8-1102(b). (Code 1993)

14-308. CHARGES CONSTITUTE A LIEN. The towing and storage charges occasioned by the impoundment of a motor vehicle pursuant to section 14-302 shall be and constitute a lien upon the impounded motor vehicle, except as provided in this section. If the hearing examiner finds pursuant to section 14-307 that the impoundment was improper and if he or she determines that the city shall bear part or all of the towing and storage charges, the lien created by this section shall be discharged. If the hearing examiner finds pursuant to section 14-306 that the impoundment was proper but that the towing and storage charges should be in an amount less than the amount of the lien, the lien created by this section shall be discharged to the extent that it exceeds the amount established by the hearing examiner. The holder of a lien created by this section may perfect such lien in any manner provided by law, but he or she may not retain possession of the motor vehicle when it has been released pursuant to section 14-306(a). In the event that the impounded motor vehicle is released from impoundment and the owner or his or her agent has provided security for payment of charges as required by section 14-306(b), the lien created by this section shall also be a lien against the security so provided, subject to being wholly or partially discharged as provided in this section. (Code 1993)

14-309. SATISFACTION OF LIEN; NOTICE OF PUBLIC SALE. The holder of a lien against a motor vehicle created by section 14-308, to the extent that such lien has not been discharged as provided in section 14-308 or otherwise satisfied, may enforce such lien in any manner provided by law after 60 days from the date the motor vehicle is impounded by the police department. If the owner of the motor vehicle or his or her agent has provided security for the payment of the lien as provided in section 14-306(b), the lien shall first be satisfied out of the security so provided and, if any portion of the lien remains unsatisfied and undischarged, may then be enforced in any manner provided by law. If the motor vehicle against which the lien is created pursuant to section 14-308 is still under impoundment 60 days from the date it is impounded by the police department and the owner has not requested release of the motor vehicle from impoundment nor paid the towing and storage charges that are the basis for the lien, the motor vehicle shall be sold at public sale to the highest and best bidder for cash to satisfy the lien. Notice of the sale shall be given in accordance with K.S.A. 8-1102. Publication, required by K.S.A. 8-1102, may be made before the termination of the 60 day period for a sale thereafter. (Code 1993)

14-310. REDEMPTION. If the city is to conduct the sale:

(a) Any holder of a recorded lien or retained title on a motor vehicle to be sold by the city under the provisions of section 14-309 may claim and take possession thereof, upon payment of accrued charges and estimated costs of publication of the notice of sale to the police department and the deposit with the police department of sufficient assurance by surety bond or otherwise, approved by the city attorney, that the motor vehicle will be forthcoming for public sale thereof or upon claim of the rightful owner prior to the sale. The police department shall, within three days, make a report to the city treasurer and deliver the charges and costs so paid to the city treasurer, taking a receipt therefor and filing it, together with a duplicate copy of the report to the city treasurer, with the records in his or her office. The funds shall be held in a trust account until final disposition of the motor vehicle. Not less than five days before the date for sale of the motor vehicle, the police department shall notify the lienholder or retained titleholder of the time and place for the sale, and the lienholder or retained titleholder shall deliver such motor vehicle to the police department at or before 12:00 noon of the day before the sale. At the sale the amount paid shall be credited on the bid of the lienholder or retained titleholder. If the lienholder or retained titleholder is the successful bidder for the motor vehicle, the police department shall report this fact to the city treasurer and then the funds previously paid by the lienholder or retained titleholder shall be relieved of the trust previously impressed and become the same as other funds received by the city for storage and costs of impounded motor vehicles. If the motor vehicle is sold for a higher bid to any person other than the lienholder or retained titleholder, the police department shall report this fact to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him out of the trust account.

(b) And if the rightful owner of the motor vehicle claims the same before the sale by payment of the accrued charges, the police department shall immediately notify the lienholder or retained titleholder in possession of the motor vehicle and he or she shall return the same to the police department within 12 hours. The police department shall report this redemption by the rightful owner to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him or her out of the trust account. (Code 1993)

14-311. SALE PROCEEDS. The proceeds of a public sale held pursuant to section 14-308 whether such sale was conducted by the city or by any other person, after payment of the towing and storage charges and costs and expenses incident to the sale, shall be deposited with the city treasurer, if the owner of the motor vehicle is absent from the sale, for credit to the trust account. The funds deposited in the trust account pursuant to this section shall remain in the account subject to the order of the person legally entitled thereto, but if no claim is made for these funds within a period of one year after the sale, the

funds shall become the property of the city, be released from the trust account and be paid into the general fund as miscellaneous revenues. (Code 1993)

- 14-312. **STATUTORY PROCEDURES.** Nothing in this article shall be construed to augment, diminish, supersede or otherwise interfere with any statutory procedure established by the legislature for the collection of unpaid towing and storage charges. The procedures in this article are supplementary and cumulative to any statutory procedures. (Code 1993)
- 14-313. **IMPLEMENTATION OF ARTICLE.** The police department and city treasurer are authorized to make rules for the implementation and administration of this article. (Code 1993)
- 14-314. **REIMBURSEMENT FOR DISCHARGED LIENS.** If a lien created by section 14-308 and held by a private wrecker or towing firm is discharged by section 14-308 pursuant to a determination by a hearing examiner that an impoundment was improper and that the city shall bear part or all of the towing and storage charges, the city shall pay to the firm the amount determined by the hearing examiner. No payment shall be made until it is authorized by the city attorney. (Code 1993)

PUBLISHED IN THE CUNNINGHAM COURIER, THE OFFICIAL CITY PAPER,
SEPTEMBER 28, 2007.
ORDINANCE NO. 512-07

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF CUNNINGHAM, KANSAS; INCORPORATING BY REFERENCE THE "STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES," EDITION OF 2006, AND REPEALING ORDINANCE NUMBERED 14-101

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CUNNINGHAM, KANSAS:

Section 1. INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Cunningham, Kansas, that certain traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2006, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas. No fewer than three copies of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Adopted by Ordinance No. 512," and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such a number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

Section 2. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.


(a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.

(b) All traffic violations which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

Section 3. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official city paper.

Approved and passed by the Governing Body of the City of Cunningham, Kansas, this 24th day of September, 2007.

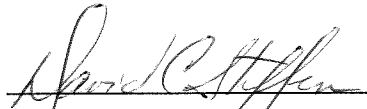
THE GOVERNING BODY OF THE
CITY OF CUNNINGHAM, KANSAS



Jack Meyers, Mayor

(SEAL)

Attest:



David Steffen, City Clerk

