

VILLAGE OF MT. AUBURN

ORDINANCE NO. 93

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 9 AND DELETING
ARTICLE VII OF CHAPTER 9 OF THE MT. AUBURN VILLAGE CODE
(Re: Abandoned, Damaged, Inoperable or Unlicensed Vehicles)

ADOPTED BY THE
BOARD OF TRUSTEES
OF THE
VILLAGE OF MT. AUBURN
THIS ~~7TH~~ DAY OF ~~OCTOBER~~, 2003
4th Day of Nov. 03

PUBLISHED IN PAMPHLET FORM BY AUTHORITY
OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF
MT. AUBURN, CHRISTIAN COUNTY, ILLINOIS
THIS ~~7TH~~ DAY OF ~~OCTOBER~~, 2003

4th Day of Nov 03

VILLAGE OF MT. AUBURN

ORDINANCE NO. 93

**AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 9 AND DELETING
ARTICLE VII OF CHAPTER 9 OF THE MT. AUBURN VILLAGE CODE
(Re: Abandoned, Damaged, Inoperable or Unlicensed Vehicles)**

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT AND
BOARD OF TRUSTEES OF THE VILLAGE OF MT. AUBURN, CHRISTIAN COUNTY,
ILLINOIS, AS FOLLOWS:

Section 1: Article VI of Chapter 9 of the Mt. Auburn Village Code is hereby
amended and shall now read as follows:

CHAPTER 9

MOTOR VEHICLE CODE

ARTICLE VI

ABANDONED, DAMAGED, INOPERABLE OR UNLICENSED VEHICLES

9-6-1: DEFINITIONS: The following definitions shall apply in the interpretation and enforcement of this Chapter:

ABANDONED VEHICLE: Any vehicle that is left at any place for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

DAMAGED VEHICLE: Any motor vehicle or non-motor vehicle that has been wrecked, stripped, junked, or disabled. "Damaged Vehicle" shall not include: (a) a motor vehicle which has been rendered temporarily incapable of being driven under its own power in order to perform ordinary service or repair operations not to exceed thirty (30) days; (b) any motor or non-motor vehicle that is kept within a completely enclosed building when not in use; (c) operable and licensed historic vehicles over twenty-five (25) years of age; (d) a vehicle on the premises of a place of business engaged in wrecking, salvage, or junking of vehicles and such premises are properly zoned and duly licensed and operating such place of business; (e) a motor or non-motor vehicle on the premises which are properly zoned to permit, and which is regularly and customarily engaged in a commercial business involving the commercial sale or repair of vehicles; (f) one unlicensed operable vehicle with a "For Sale" sign affixed thereto, for a period not to exceed thirty (30) days in any twelve (12) calendar month period; and (g) any stationary vehicle used for advertising

purposes which is located on commercially zoned property and which advertisement on such vehicle solely advertises the business properly being operated on such commercially zoned property; provided, the owner of such property obtains a permit from the Village to locate such vehicle on such property for such purpose, which permit may be denied in the Village's sole discretion.

INOPERABLE VEHICLE: Any motor vehicle from which for a period of at least seven (7) days, the engine, wheels or other parts have been removed or on which the engine, wheels or other parts have been altered, damaged or otherwise so treated that the vehicle is incapable of being driven under its own motor power; or any non-motor vehicle from which, for a period of at least seven (7) days, the wheels or other parts have been removed or so altered, damaged, or otherwise treated that such vehicle is incapable of being moved in its ordinary mode of travel. "Inoperable Vehicle shall not include: (a) a motor vehicle which has been rendered temporarily incapable of being driven under its own power in order to perform ordinary service or repair operations not to exceed thirty (30) days; (b) any motor or non-motor vehicle that is kept within a completely enclosed building when not in use; (c) operable and licensed historic vehicles over twenty-five (25) years of age; (d) a vehicle on the premises of a place of business engaged in wrecking, salvage, or junking of vehicles and such premises are properly zoned and duly licensed and operating such place of business; (e) a motor or non-motor vehicle on the premises which are properly zoned to permit, and which is regularly and customarily engaged in a commercial business involving the commercial sale or repair of vehicles; and (f) one unlicensed operable vehicle with a "For Sale" sign affixed thereto, for a period not to exceed thirty (30) days in any twelve (12) calendar month period.

MOTOR VEHICLE: A machine propelled by power, other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, buggy and wagon.

OCCUPANT: Any adult person occupying the private property where any motor or non-motor vehicle is found.

OWNER: Any person or persons who is an owner, lessee, bailee or possessor of any motor or non-motor vehicle.

PERSON: Any person, firm, partnership, association, corporation, company, organization or entity of any kind, nature, or extent whatsoever.

PRIVATE PROPERTY: Any real private property within the corporate limits of the Village of Mt. Auburn, Illinois.

PUBLIC PROPERTY: Any real public property within the corporate limits of the Village of Mt. Auburn, Illinois.

UNLICENSED MOTOR VEHICLE: Any motor vehicle which does not have a current Illinois license and registration sticker affixed to same.

9-6-2: ABANDONMENT OF VEHICLES: No person shall abandon any vehicle within the Village on public or private property, and no person shall leave any vehicle at any place within the Village on public or private property for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned. All said abandoned vehicles are hereby declared a nuisance.

9-6-3: MAINTENANCE OR STORAGE DECLARED NUISANCE:

A. No person shall maintain, store, or permit the storage on any public property for a period of seven (7) or more days, of any unlicensed motor vehicle or damaged vehicle or abandoned vehicle or inoperable vehicle. Such maintenance or storage is hereby declared a nuisance.

B. No person shall maintain, store, or permit the storage on any private property, for a period of fifteen (15) or more days, of any unlicensed motor vehicle or damaged vehicle or abandoned vehicle or inoperable vehicle. Such maintenance or storage is hereby declared a nuisance.

9-6-4: OWNER(S) REQUIRED TO ABATE NUISANCE:

A. **NUISANCE FOUND ON PRIVATE PROPERTY:** Whenever a member of the Village's Police Department or the Village's Zoning Enforcing Officer or the Village Board's designated person, from time to time, finds any inoperable vehicle, damaged vehicle or unlicensed vehicle or abandoned vehicle on private property, he or she shall issue a written Order to the "known" or "unknown" owner of such vehicle directing such owner to abate such nuisance, within ten (10) days, in one of the following ways: (1) Transfer to and store such vehicle in a completely enclosed building; or (2) permanently remove said vehicle to a location outside the corporate limits of the Village.

This Order shall include the vehicle's vehicle identification number (VIN) to the extent it is ascertainable from the vehicle by such police officer or the Village's Zoning Enforcing Officer or the aforesaid Village Board designated person; the date of the notice; the date by which the vehicle must be removed or enclosed; the possible penalties for failing to abate the nuisance; and a statement of the right to request in writing, within 7 days after the date of the Order, a hearing, as referred to in 9-6-4-1, on the issue of whether the subject vehicle is an "Abandoned Vehicle," "Damaged Vehicle," "Inoperable Vehicle," or "Unlicensed Vehicle." The Order shall be effective until said vehicle is placed within a completely enclosed building or removed from the Village's corporate limits. Notice of such Order shall be placed on such vehicle, and copies of the Notice shall be served on any adult occupant of the private property on which such vehicle is located, and also on the owner of the vehicle, if his or her name and whereabouts be known. If no occupant of such private property or owner of such vehicle can be found, such Notice affixed to any building on such private property shall constitute Notice to the owner and

occupant of such private property and Notice to the owner of such vehicle. If there is no building on such private property, the Notice may be affixed elsewhere on such private property and same shall constitute the Notice to the occupant of such private property and Notice to the owner of such vehicle. If such vehicle is not removed within ten days pursuant to the Order and Notice, and if the Order is not stayed by the issuing police officer or the Village's Zoning Enforcing Officer or the aforesaid Village Board designated person pursuant to a written request showing good cause for a permanent or temporary stay, the Police Department or the Village's Zoning Enforcing Officer or such Village Board designated person shall cause such vehicle to be removed by a junk or salvage yard or wrecker service; and all costs and expenses of the removal of said vehicle, the storage of said vehicle, and the disposal and/or sales charges shall be paid by and recoverable from the owner(s) of said vehicle, jointly and severally, in a suit at law. The vehicle shall not be removed from private property without a warrant issued by a court of competent jurisdiction.

B. NUISANCE FOUND ON PUBLIC PROPERTY: Whenever a member of the Village's Police Department or the Village's Zoning Enforcing Officer or the aforesaid Village Board designated person finds any inoperable vehicle, damaged vehicle or unlicensed vehicle or abandoned vehicle on public property, he or she shall issue a written Order to the "known" or "unknown" owner of such vehicle directing such owner to abate such nuisance, within seven (7) days, in one of the following ways: (1) Transfer to and store such vehicle in a completely enclosed building; or (2) permanently remove said vehicle to a location outside the corporate limits of the Village.

This Order shall include the vehicle's vehicle identification number (VIN); the date of the notice; the date by which the vehicle must be removed or enclosed; the possible penalties for failing to abate the nuisance; and a statement of the right to request in writing, within 7 days after the date of the Order, a hearing as referred to in 9-6-4-1 of the Village Code, on the issue of whether the subject vehicle is an "Abandoned Vehicle," "Damaged Vehicle," "Inoperable Vehicle," or "Unlicensed Vehicle." Notice of such Order shall be placed on said vehicle. If said vehicle is not removed within seven days pursuant to the Order and Notice, the Police Department or the Village's Zoning Enforcing Officer or the aforesaid Village Board designated person shall cause said vehicle to be removed by a junk or salvage yard or wrecker service; and costs and expenses of the removal of said vehicle, the storage of said vehicle and the disposal and/or sales charges shall be paid and recoverable from the owner(s) of said vehicle, jointly and severally, in a suit at law.

9-6-4-1: RIGHT TO A HEARING: The owner of the vehicle may request a hearing before a hearing officer appointed by the Village President from time to time with advice and consent from the Board of Trustees on the issue of whether the subject vehicle is an "Abandoned Vehicle," "Damaged Vehicle," "Inoperable Vehicle," or "Unlicensed Vehicle." A request for hearing must be made in writing and submitted to the Village Clerk within 7 days after the date of the Order from the Village that the vehicle is an "Abandoned Vehicle," "Damaged Vehicle," "Inoperable Vehicle," or "Unlicensed Vehicle." A request for hearing or a request for an extension of time stays the enforcement of the ordinance, pending the hearing and a decision by the hearing officer or a ruling on the request for an

Comment: Do we want to leave out the warrant requirement in case the Redwood case is reversed by the Supreme Court. If the warrant is required, we can still get one even though the ordinance does not state the requirement. If Redwood is reversed re the warrant requirement, then we would have to amend the ordinance again.

extension of time by the hearing officer. A hearing requested pursuant to this Article shall take place within 14 calendar days after the written request for hearing is made. At the hearing, the hearing officer shall hear the evidence presented by the Village and by the owner(s) and determine by a preponderance of the evidence whether the vehicle at issue is an "Abandoned Vehicle," "Damaged Vehicle," "Inoperable Vehicle," or "Unlicensed Vehicle."

9-6-4-2: PROSECUTION OF VIOLATORS: If the owner(s) of an inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle fails to abate the nuisance after having been served with a written order pursuant to 9-6-4 of the Village Code or fails to request a hearing within the allotted time pursuant to 9-6-4-1 of the Village Code or following such requested hearing, the Hearing Officer determines that the subject vehicle is an inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle, then the Village may file a complaint with a court of competent jurisdiction seeking an order granting the following relief:

- A. The issuance of an administrative search and seizure warrant to remove the vehicle from the property where it may be located.
- B. A declaration that the owner(s) of the inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle are in violation of 9-6-2 and/or 9-6-3 and/or 9-6-4 of the Village Code.
- C. A declaration that any search and seizure of an inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle performed pursuant to an administrative search and seizure warrant was proper and in compliance with all applicable laws.
- D. A fine for the owner(s) of any inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle pursuant to 9-6-7 and 1-1-20 and 1-1-22 of the Village Code.
- E. Authorizing the sale of the inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle pursuant to 9-6-5 of the Village Code unless the owner(s) pay all towing, removal, and storage charges.
- F. Requiring the Illinois Secretary of State to issue a certificate of title for the vehicle to the purchaser of the inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle.
- G. For such other, further or different relief favorable to the Village of Mt. Auburn.

9-6-5: SALE OF VEHICLE: In the event said inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle is removed from the private property of the owner(s) of the vehicle and placed in storage by, on behalf of, or at the direction of the

Village's police department or the Village's Zoning Enforcing Officer or the aforesaid Village Board designated person, the Village shall send notice to the owner(s) containing the following:

- A. The date of the towing.
- B. The name, address and telephone number of the entity that towed the vehicle.
- C. The address where the vehicle is being stored.
- D. The amount of the towing, removal, and storage charges, including any per diem charges.
- E. A statement that the vehicle shall be sold by private or public sale or may be sold to the entity that towed said vehicle for the amount of the towing, removal, and storage charges, as the Village shall decide in its sole discretion unless the owner(s) pay all applicable towing, removal, and storage charges within 15 days from the date the notice is mailed to the last known address of the owner(s).

Said notice shall be mailed by U.S. mail, postage pre-paid to the last known address of the owner(s) of the vehicle. If the owner(s) of the vehicle do not pay all applicable towing, removal, and storage charges within 15 days after the date the notice is mailed, then said vehicle may be sold by the Village at any time thereafter at public or private sale or may be sold to the entity that towed said vehicle for the cost of the towing, removal, and any applicable storage charges, as the Village shall determine in its sole discretion. If the sale proceeds are insufficient to pay the costs of sale, removal and storage expenses, then the owner(s) of said vehicle shall be jointly and severally liable to the Village for the balance of such costs and expenses and to be recoverable in a suit at law. If the sale proceeds are sufficient to pay said costs of sale, towing, removal, storage expenses, ordinance violation fines, court costs, and/or expenses then the balance shall be deposited with the Village Treasurer and shall be paid to any one or more of the owner(s) of such vehicle, if known and located as the Village shall determine. The Village shall have the right to deduct from said balance an amount equal to any ordinance violation fine(s), court costs and/or expenses assessed against the previous owner(s) of said inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle before making a distribution to said former owner(s) of said vehicle.

If the said inoperable vehicle or damaged vehicle or unlicensed vehicle or abandoned vehicle is removed from public property or from private property of some person or entity other than the owner(s) of said vehicle, then said vehicle shall be disposed of by the entity that towed the vehicle pursuant to Article II of Chapter 4 of the Illinois Vehicle Code (625 ILCS 5/4-201 *et seq.*) as now enacted or hereafter amended or pursuant to any subsequent statutory provisions.

9-6-6: NON-LIABILITY OF VILLAGE, ETC.: The Village, its elected and/or appointed officers, agents, employees, Village President, Village Board of Trustees, the Village's Police Department and the members thereof, the Village Zoning Enforcing Officer, and the aforesaid Village Board designated person(s), and the towing service owner or storage service owner, operator, agent or employee shall not be liable for damages in any action brought by any owner or former owner or the owner's legal and/or personal representative, successors or assigns, lien holder or any other person legally entitled to the possession of any vehicle when said vehicle was processed or disposed of according to this Article VI.

9-6-7: PENALTIES: In addition to and not in lieu of any of the other penalties or provisions set forth in this Article VI, any person violating any of the provisions of this Article VI shall, upon conviction, be fined in accordance with 1-1-20 and 1-1-22 of the Village Code for each separate offense, and a separate offense shall be deemed to occur on each day on or during which a violation is deemed to exist or continues.

Section 2: Article VII of Chapter 9 of the Mt. Auburn Village Code is hereby deleted and shall be of no further, force, and effect.

Section 3: That the provisions of other Village of Mt. Auburn Ordinances and/or Village Code, to the extent they duplicate, conflict with or otherwise affect the validity hereof, shall be disregarded.

Section 4: If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not affect or otherwise impair any other section, clause, provision or portion of this Ordinance which is not, in or of itself, invalid or unconstitutional.

Section 5. This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

ON MOTION DULY MADE AND SECONDED and pursuant to roll call vote, the Ordinance was passed, approved and adopted this ^{4th} ~~7th~~ day of ^{Nov} ~~October~~, 2003.



JERRY SEYMOUR, Village President of the
Village of Mt. Auburn, Illinois

ATTEST:


TAMMY HAMELL, Village Clerk

(MUNICIPAL SEAL)

AYES: _____

NAYS: _____

ABSENT: _____

FILED IN THE OFFICE OF THE VILLAGE CLERK, VILLAGE OF
MT. AUBURN, ILLINOIS, ON THE ~~7th~~^{4th} DAY OF ~~OCTOBER~~^{NOV}, 2003.
PUBLISHED IN PAMPHLET FORM, THIS 8TH DAY OF ~~OCTOBER~~^{NOV}, 2003

CERTIFICATE


STATE OF ILLINOIS)
) SS.
COUNTY OF CHRISTIAN)

I, TAMMY HAMELL, certify that I am the duly elected and acting Village Clerk of the Village of Mt. Auburn, Christian County, Illinois.

I further certify that on ~~October 7~~^{Nov 4}, 2003, the Mt. Auburn Board of Trustees passed and approved Ordinance No. _____, entitled, "AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 9 AND DELETING ARTICLE VII OF CHAPTER 9 OF THE MT. AUBURN VILLAGE CODE (Re: Abandoned, Damaged, Inoperable or Unlicensed Vehicles)" which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 93, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the Village Hall, commencing on October 8, 2003, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the Office of the Village Clerk.

DATED at Mt. Auburn, Illinois, this 20th day of ~~October~~^{Nov}, 2003.


TAMMY HAMELL, Village Clerk

(Municipal Seal)