

ORDINANCE NO. CC 99-7

**AN ORDINANCE PROVIDING FOR THE REMOVAL AND
DISPOSAL OF ABANDONED VEHICLES AND ENFORCEMENT
OF INDIANA CODE 9-22-1 BY THE ELKHART COUNTY
SHERIFF'S DEPARTMENT WITHIN THE UNINCORPORATED
AREAS OF ELKHART COUNTY, AND CREATING A FUND
FOR THE PURPOSE OF IMPLEMENTING THE
PROVISIONS OF THIS ORDINANCE**

WHEREAS in the unincorporated areas of Elkhart County, Indiana, vehicles are, or may in the future be, abandoned in the streets and other public premises; and

WHEREAS there are, or may in the future be, abandoned, wrecked, junked, nonoperating, or discarded vehicles in places other than in storage or impoundment yards or in other places appropriate for such activity; and

WHEREAS such conditions have been demonstrated as tending to impede traffic or interfere with the enjoyment of and reduce the value of private property; invite vandalism and plundering; encourage the presence of vermin; create fire hazards and other safety and health hazards to children and adults; interfere with the comfort and well being of the public; and create, extend and aggravate blight; and

WHEREAS adequate protection of the public health, safety welfare and comfort requires that such conditions be regulated, prohibited or abated; and

WHEREAS the Indiana legislature has provided, in Indiana Code § 9-22-1, as amended, procedures for the removal and disposal of abandoned vehicles by local governments; and

WHEREAS said law provides that the County Council may establish procedures for the disposal of abandoned vehicles and may establish charges allowed for towing and storage of abandoned vehicles; and

WHEREAS said law further provides that counties may employ such personnel as are necessary to facilitate the removal of abandoned vehicles and parts; and

WHEREAS the County Council of the County of Elkhart, Indiana wishes to exercise this power;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF THE COUNTY OF ELKHART, INDIANA, THAT:

Section 1. Responsible Department, Powers. The Elkhart County Sheriff's Department is hereby designated and assigned as the public agency with local responsibility for the removal, storage, and disposal of abandoned vehicles and vehicle parts within the unincorporated areas of the County of Elkhart, Indiana, pursuant to Indiana Code 9-22-1, as now or hereafter amended, and said Department is hereby granted all powers reasonable and necessary for the performance of its responsibilities under this Ordinance. The Sheriff's Department may authorize in writing agents or employees of the Elkhart County Department of Planning and Development to initiate enforcement of this Ordinance as outlined in Section 4, subsection a, subparagraphs 1, 2, and 3.

Section 2. Abandoned Vehicle Fund. There is hereby continued the Abandoned Vehicle Fund which shall be a revolving fund, and all monies paid to the County for the cost of removal, storage, and disposal of abandoned vehicles shall be placed in said fund and in no other place. Monies in existing accounts (if any) designated for the removal, storage and disposal of

abandoned or junk vehicles under previously enacted ordinances shall be transferred to the Abandoned Vehicle Fund continued herein. Said fund shall also have added to it such monies as may be appropriated by the County Council. The costs of removal and storage of an abandoned vehicle or parts not claimed by the owner or lienholder shall be paid from the Abandoned Vehicle Fund. The proceeds of sale of an abandoned vehicle or parts by the Department in accordance with subsections 6(a) and (c) shall be credited against all costs and incident to the removal, storage, and disposal of the vehicle. All monies remaining in said fund at the end of each year shall remain in such fund and not revert to the General Fund. The monies in said fund shall be expended and used only for the purposes enumerated in Indiana Code 9-22-1 providing for the disposal of abandoned vehicles.

Section 3. Definitions. As used in this Ordinance, "Abandoned Vehicle" means:

- (1) A vehicle located on public property illegally;
- (2) A vehicle left on public property without being moved for three (3) days;
- (3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicle traffic on a public right-of-way;
- (4) A vehicle from which the engine, transmission, or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property;
- (5) A vehicle that has been removed by a towing service or a public agency upon request of an officer enforcing a statute or an ordinance other than this chapter, if the

impounded vehicle is not claimed or redeemed by the owner or the owner's agent within twenty (20) days of its removal; or

(6) A vehicle that is at least three (3) model years old, and is left on private property continuously in a location visible from public property for more than twenty (20) days.

As used in this Ordinance, "Department" means the Elkhart County Sheriff's Department.

The remaining definitions, not altered or amended by this Section 3, and contained in Indiana Code Section 9-13-2 are adopted for other terms appearing in this Ordinance.

Section 4. Procedure.

(a) Sheriff's Department Procedure. An officer who finds a vehicle or parts believed to be abandoned, a traffic hazard, or a vehicle parked in violation of traffic ordinance shall do the following:

1. The police officer shall identify the vehicle or parts to be removed and classify the vehicle or parts as:

(i) abandoned;

(ii) a traffic hazard; or

(iii) a vehicle parked in violation of a traffic ordinance.

2. If the vehicle or parts are classified as "abandoned," the officer shall attach in a prominent place on the vehicle or parts a notice tag. The officer shall also conduct an owner identification search. If the owner is known or identified, the police officer shall serve notice of hearing on the owner.

3. The notice served on the owner and placed on the vehicle or parts shall contain the following information:

- (i) The date, time, officer's name, public agency, and address and telephone number to contact for information;
- (ii) That the vehicle or parts are considered abandoned;
- (iii) That a hearing will be held regarding the towing of this vehicle or parts;
- (iv) The date, time and place of the hearing which shall be no less than seventy-two (72) hours after the notice tag is placed on the vehicle or parts;
- (v) That the owner may avoid a hearing by removing the vehicle or parts prior to the date of said hearing and notifying the appropriate agency of said removal;
- (vi) That the owner will be held responsible for all costs, incidental to the removal, storage, and disposal of the vehicle.

4. If the vehicle or parts are classified as a traffic hazard or a traffic violation, or if any other emergency exists requiring immediate removal of the vehicle, the vehicle or parts can be summarily towed or removed. Where the owner is identified, the police officer shall immediately serve a notice of hearing (concerning the towing or removal of the vehicle or parts) to be held at a designated time and place. Where the owner is not identified, the officer shall conduct a reasonable search for the owner. Once the owner is identified, the officer shall issue notice to the owner and a hearing shall be held within forty-eight (48) hours of service of notice. Such notice shall state:

- (i) The date, time, officer's name, public agency, and address and telephone number to contact for information;

(ii) That the vehicle or parts are considered a traffic hazard or parked in violation of a traffic ordinance;

(iii) That the vehicle or parts have been towed or removed and the location of said vehicle or parts;

(iv) That a post-tow hearing shall convene regarding the towing of this vehicle and the charges therefor;

(v) The date, time and place of the post-towing hearing.

(vi) That the owner may reclaim the vehicle or parts prior to the hearing if the owner posts bond in an amount equal to the towing and storage fees;

(vii) That the owner must pay towing and storage fees if the officer finds in favor of the County. The owner will not be required to pay any charges and any bond will be refunded if the hearing officer finds in favor of the owner.

(b) If the owner is duly served with notice of hearing and fails to appear

at the time and place specified, or if the owner appears and fails to establish non-violation of this

Ordinance:

1. The hearing officer shall prepare a written abandoned vehicle report of the vehicle or parts including information on the condition, missing parts, and other facts that might substantiate that the market value is less than One Hundred Dollars (100.00). Photographs shall be taken to document the condition of the vehicle or parts.

2. If, in the opinion of the hearing officer, the market value of the abandoned vehicle or parts is less than One Hundred Dollars (\$100.00), the hearing officer shall immediately dispose of the vehicle to an automobile scrapyard. A copy of the abandoned vehicle report and photographs relating to the abandoned vehicle shall be forwarded to the Bureau. The Department shall retain the original records and photographs for at least two (2) years.

3. If, in the opinion of the hearing officer, the market value of the abandoned vehicle or parts is One Hundred Dollars (\$100.00) or more, the

hearing officer shall require the vehicle or parts to be towed to a storage area.

(c) The hearing officer or officers contemplated by this Section 4 shall be a merit officer of the Elkhart County Sheriff's Department. All hearings will be held at the Elkhart County Sheriff's Department facilities on North Third Street in Goshen, Indiana, unless the notice to the affected owner or lienholder specifically states to the contrary.

Section 5. Notice.

(a) After removal of a vehicle to a storage area under Section 4, the Department shall prepare and forward to the Bureau an abandoned vehicle report containing a description of the vehicle including the make, model, readily available vehicle identification number, and the number of the license plate (if any), and request that the Bureau advise the Department of the name and most recent mailing address of the owner and any lienholder.

(b) If a reasonable search discloses the name and address of the owner or lienholder, a written notice by first class mail shall be served on the owner, with a copy to any lienholder indicating that the vehicle or parts have been impounded at a certain location and must be removed within twenty (20) days of the date of mailing of the notice and advising that the vehicle or parts will be disposed of after that time, and advising the owner or any lienholder that all costs incurred in removing and storing the vehicle or parts are his legal responsibility.

Section 6. Disposal.

(a) Unidentifiable Vehicles - If a vehicle or parts are in such condition that vehicle identification numbers or other means of identification are not available to determine

the person who owns or holds a lien on the vehicle, the vehicle may be disposed of without notice.

(b) Vehicles valued at more than One Hundred Dollars (\$100.00) - If, in the opinion of the officer, the market value of the abandoned vehicle or parts is greater than One Hundred Dollars (\$100.00), the Department shall give notice as provided in Section 5 of this Ordinance. If the owner or lienholder does not appear within twenty (20) days after the mailing of the notice, the Department shall sell the vehicle or parts to the highest bidder at a public sale conducted after notice under I.C. 5-3-1, except only one (1) newspaper insertion one (1) week before the public sale is required. The purchaser shall be furnished a bill of sale for each abandoned vehicle sold by the Department. The fee for the bill of sale shall be Six Dollars (\$6.00).

Section 7. Exceptions. This Ordinance does not apply to:

- (1) A vehicle in operable condition specifically adapted or constructed for operation on privately owned raceways;
- (2) A vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment;
- (3) A vehicle located on a vehicle sale lot or at a commercial vehicle servicing facility;
- (4) A vehicle located upon property licensed or zoned as an automobile scrapyard; or
- (5) A vehicle registered and licensed under I.C. 9-18-12 as an antique vehicle.

Section 8. Towing Charges. The charge for the towing and storage of abandoned vehicles shall be the customary charge for towing and storage of other vehicles ordered by the County of Elkhart, Indiana. The towing or storage business used shall be determined by the Department.

Section 9. Time. In computing any period of time prescribed in this Ordinance, the day of the act, event, tagging, or mailing from which the designated period of time begins to run shall not be included. Such time shall begin to run on the next succeeding day and shall conclude on midnight of the last day of the period that is not a Saturday, Sunday or legal holiday.

Section 10. Repealer. Any Ordinances in conflict herewith are hereby repealed upon the effective date of this Ordinance.

Section 11. Severability. If any section or part of any section of this Ordinance shall be declared invalid, the remaining portions of this Ordinance shall continue in effect as enacted.

Section 12. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication, according to law.

ORDAINED THIS 13th DAY OF November 1999.

Harmon M. Williams

President
Elkhart County Council

2005
Amendment

ORDINANCE NO. CC-05-01

AN ORDINANCE AMENDING THE ELKHART COUNTY
ABANDONED VEHICLE ORDINANCE IDENTIFIED AS
ORDINANCE NO. CC 99-7

WHEREAS the Elkhart County Council adopted the Elkhart County Abandoned Vehicle Ordinance identified as Ordinance No. CC 99-7 ("Ordinance") on November 13, 1999;

WHEREAS the Elkhart County Code Enforcement Officer has requested that the Ordinance be revised and updated to be consistent with current Indiana law as provided in Indiana Code Section 9-22-1 et seq. and Indiana Code Section 9-13-2-1 thereby allowing Elkhart County enforcement authority with respect to abandoned vehicles to the fullest extent permitted by law;

NOW, THEREFORE, BE IT ORDAINED by the County Council of the County of Elkhart, Indiana as follows:

1. Definitions.

(a) An "Abandoned Vehicle" as defined in Section 3 of the Ordinance shall, in addition to the vehicles identified therein, also include a vehicle that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours.

(b) With respect to the Abandoned Vehicles provided in Section 3 of the Ordinance, subsection (6) shall be deleted and replaced with the following:

A vehicle that is at least three (3) model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than twenty (20) days.

2. Exceptions. Subsection (3) of Section 7 of the Ordinance shall be deleted and replaced with the following:

(3) A vehicle located on a vehicle sale lot.

3. Amendatory Affect. Except as amended herein, Ordinance No. CC 99-7 shall remain in full force and effect. This Amendatory Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

ORDAINED this 5th day of February, 2005.

ELKHART COUNTY COUNCIL

By [Signature]
John K. Letherman

By [Signature]
Donald E. Abel

By [Signature]
Dennis E. Sharkey

By [Signature]
James L. Hartman

By [Signature]
Clarence J. Yoder

By [Signature]
Neil D. Herman

By [Signature]
C. Scott Homan

ATTEST:

[Signature]
David L. Hess
Elkhart County Auditor