

MEMORANDUM

TO: East Prospect Borough Council

FM: Steven M. Hovis, Esquire

DT: June 1, 1998

RE: Abandoned Vehicle Ordinance

The Ordinance Committee requested that I review Ordinance No. 87-4. This Ordinance deals with the parking, storing, leaving or abandoning wrecked, junked or stripped vehicles. Previously a challenge was raised to this Ordinance concerning its alleged per se declaration of such nuisances. I would agree that as currently written the Ordinance is unconstitutional and needs to be reworked.

The Appellate Courts of this Commonwealth have determined that municipalities do not have the power to declare or define the storage of junked or abandoned vehicles as a nuisance per se. It is well established that a municipal ordinance which seeks to abate the storage of wrecked, junked or abandoned vehicles cannot declare the mere presence of such vehicles on any given property to be a nuisance per se. An Ordinance must be drafted in such a way as to require the municipality to affirmatively establish that a nuisance in fact exists. In certain cases, the Courts have stated that a municipality cannot merely rely upon evidence indicating that a vehicle is lacking current registration plates and/or inspection stickers. The municipality must produce evidence that establishes that the vehicle poses a danger to the public's health, safety and welfare.

With that in mind, I have prepared the attached Ordinance. As you can see, the Ordinance requires East Prospect Borough to determine that the vehicle in question has some nuisance or danger associated with it.

I would ask that the Borough Council review this Ordinance and provide me with any comments. If acceptable, I will advertise it for passage at the next Borough Council meeting.

NOTE: I have also included certain provisions of the Motor Vehicle Code that permits the removal of certain "abandoned" vehicles by the police.