

ORDINANCE NO. 412 OF THE CITY OF BUCKHANNON, AN ORDINANCE AMENDING ZONING ORDINANCE NO. 244 AND ORDINANCE NO. 299 OF THE CITY OF BUCKHANNON, BY AMENDING THE PERMITTED USES WITHIN THAT ZONE DESIGNATED AS C-4, THE CORRIDOR DISTRICT, TO INCLUDE THE CONSTRUCTION, PLACEMENT, AND OPERATION OF DIGITAL BILLBOARDS OR SIGNS

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WHEREAS, the City of Buckhannon first adopted comprehensive zoning in 1973 pursuant to Ordinance No. 166; and,

WHEREAS, by Ordinance No. 244, the City of Buckhannon established the zoning structure for the City of Buckhannon which is in operation as of the date of this Ordinance; and,

WHEREAS, by Ordinance No. 299, the City of Buckhannon amended said Ordinance No. 244 to create the "C-4", Corridor District; and,

WHEREAS, that the construction, placement and operation of digital billboards or signs, which as an advertising and technological innovation arose since the creation of the Corridor District are not currently permitted within the aforesaid C-4 Zone; and,

WHEREAS, The City recognizes that billboards are, by their nature, different in scope and purpose from other types of signage in the City. Billboards are significantly larger in size than other types of signage allowed in the City and their principal purpose is to dramatically attract the attention of the travelling public. The potential impact of a billboard on adjacent areas is significantly greater than other types of signage. Advancements in technology and efficiencies enable signs to change static message or copy electronically (e.g. utilizing an LED or digital type of sign). These newer technologies exacerbate the potential impact of a billboard in terms of adversely dominating the environment in which they operate due to light spillover and light pollution, unless regulated in a reasonable fashion. The intent of this section is to establish standards and regulations for such digital billboards or signs, in order to minimize the secondary effects that can accompany the unregulated display of these types of signs; preserve the character and repose of adjacent areas, with a principal focus on residential neighborhoods; protect property values in all areas of the City; and, reduce traffic and similar hazards caused by undue distractions; and,

WHEREAS, the Planning Commission of the City of Buckhannon, following a properly published legal notice and public hearing held on October 24, 2016, specifically recommended to the City Council during its meeting on October 24, 2016, that the

permitted uses within the aforesaid C-4 zone be amended to include the construction, placement, and operation of digital billboards or signs, to be appropriately defined and limited; and,

WHEREAS, the Council believes it is reasonable and appropriate to permit the construction, placement, and operation of digital billboards or signs within the Corridor District, and in so doing benefiting the greater Buckhannon community; and,

WHEREAS, the Council of the City of Buckhannon now deems it to be reasonable and appropriate to adopt all of the foregoing recommendations of the Planning Commission as are set forth within the Commission's report emanating from the aforesaid October 24, 2016 meeting; and,

WHEREAS, the statutory provisions of West Virginia Code section 8-11-3(8) require that actions of the municipality in the case of planning and zoning be by adoption of an ordinance; and,

WHEREAS, the Council of the City of Buckhannon desires in all respects to comply with the statutes of the State of West Virginia insofar as the amendments to the City's comprehensive zoning ordinance, being Ordinance No. 244, are concerned.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF BUCKHANNON, AS FOLLOWS:

ARTICLE I – AMENDMENT OF PERMITTED USES WITHIN C-4 CORRIDOR DISTRICT:

(1) The Council of the City of Buckhannon does hereby adopt the recommendation of the Planning Commission as set forth within the Commission's report dated October 24, 2016 and as emanating from their meeting and public hearing of the same date, and in so doing does specifically hereby amend Ordinance No. 244 and Ordinance No. 299, to incorporate the following:

(A) The Amendment of permitted uses in the C-4 Corridor District zone to include the construction, placement, and operation of digital billboards or signs. More specifically, it shall be permitted to construct, place, and operate a billboard in the C-4 Zone in which the display is a digital display using LED or similar technology controlled via electronic communication through a secure network. Prior to the commencement of construction of a digital billboard, the owner shall file a zoning application with the Zoning Enforcement Officer, and upon the granting thereof, shall file an application for a

building permit for the same, and pay all regular fees therefor. Construction may commence upon the granting of said building permit.

(B) Maximum brightness levels shall not exceed those provided for in the rules promulgated by any agency of the State of West Virginia, and digital billboards shall at all times comply with all statutes, rules, and regulations enacted or issued by the State of West Virginia or the United States of America. Certification must be provided to the City demonstrating that the sign has been preset to automatically adjust the brightness to these levels or lower. Certified re-inspection and recalibration shall be annually required by the City, in its reasonable discretion, at the sign owner/operator's expense to ensure that the specified brightness levels are maintained at all times.

(C) Consecutive messages on a single digital or electronic sign face (digital slots) are prohibited when the second message answers a textual question posed on the prior slot, continues or completes a sentence started on the prior slot, or continues or completes a story line started on the prior slot. Nothing in the subsection shall prohibit consecutive messages by the same advertiser or consecutive messages for the same product or service; provided, that the second of such advertisements does not answer a textual questions posed on the prior advertisement slot, continue or complete a sentence started on the prior advertisement slot, or continue or complete a story line started on the prior advertisement slot.

(D) The sign shall have a default mechanism or setting that will cause the sign to turn off or show a "full black" image if a visible malfunction or failure occurs.

(E) The sign shall not be configured to resemble a warning or danger signal. The sign shall not resemble or simulate any lights or official signage used to control traffic.

(F) The owner/operator of the digital billboard sign shall maintain a secure electronic communication network that controls the display and display changes.

(G) Prior to the construction of a digital billboard sign, the owner/operator of the sign shall enter into an agreement with the City providing for public service announcements on a regular basis without charge. Such announcements shall be provided as specified in the agreement and shall include messages of significant public interest related to safety and traffic matters (e.g. AMBER Alerts, Cop Killer Alerts, severe weather, disaster, evacuation bulletins/notices, community events or

announcements, etc.).

(H) Revenues generated from any digital billboard or sign shall be subject to Business and Occupation tax, or any other city tax or fee as a structure, as applicable.

ARTICLE II – SEVERABILITY: In the event that any provision of this Ordinance is determined to be unconstitutional or otherwise invalid by a court exercising competent jurisdiction, such determination shall not affect the validity of this Ordinance either as a whole or the provisions thereof which are not specifically determined to be unconstitutional or invalid.

ARTICLE III - EFFECTIVE DATE: This Ordinance shall be deemed effective thirty (30) days following the third (3rd) reading, public hearing, passage and adoption by the Council of the City of Buckhannon, i.e., February 4, 2017.

FIRST READING:	December 1, 2016
SECOND READING	December 15, 2016
THIRD READING, PUBLIC HEARING, PASSAGE AND ADOPTION:	January 5, 2017

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David W. McCauley, Mayor

CERTIFICATE OF ENACTMENT

I, Susan Aloï, City Recorder, do hereby certify that the foregoing Ordinance No. 412 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on January 5, 2017.

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Susan Aloï, City Recorder