

ORDINANCE NO. 268 OF THE CITY OF BUCKHANNON, AN
 ORDINANCE AMENDING ORDINANCES NO. 108 AND 253 OF THE CITY OF
 BUCKHANNON, AND FURTHER AMENDING ANY AND ALL OTHER ORDINANCES
 OF THE CITY OF BUCKHANNON RESPECTING CRIMES AND OFFENSES
 RELEVANT TO THE USE OF THE PUBLIC STREETS OR PRESCRIBING
 PENALTIES FOR SUCH CRIMES AND OFFENSES, AND AMENDING THE
 CRIMINAL OFFENSE AND PENALTY THEREFORE AGAINST PERSONS
 RIDING, OPERATING OR OTHERWISE UTILIZING SKATEBOARDS OR SIMILAR
 DEVICES WITHIN THE "C-1", "C-2" AND "C-3" DISTRICTS OF BUCKHANNON,
 i.e., THE CENTRAL COMMERCIAL BUSINESS DISTRICT, THE HIGHWAY
 COMMERCIAL DISTRICT AND THE NEIGHBORHOOD COMMERCIAL DISTRICT, AND
 CREATING A CRIMINAL OFFENSE AND PENALTY THEREFORE AGAINST PERSONS
 RIDING, OPERATING OR OTHERWISE UTILIZING SKATEBOARDS EXCLUSIVELY
 UPON AND WITHIN ANY STREET, ROAD, ALLEYWAY, SIDEWALK,
 PUBLIC PARKING LOT, PARK OR ANY OTHER MUNICIPALLY, PUBLICLY OR
 OTHER GOVERNMENTALLY OWNED OR LEASED PROPERTY SITUATED WITHIN
 THE CORPORATE LIMITS OF THE CITY OF BUCKHANNON

WHEREAS, pursuant to the provisions of Section 10-8 of Article 10 of Ordinance No. 108 of the City of Buckhannon, it is unlawful for any person to operate any bicycle on any sidewalk on Main Street of Buckhannon, and it is further unlawful for any person to operate any bicycle on any other sidewalk in the City of Buckhannon in such a manner so as to endanger or interfere with pedestrians using the sidewalk; and,

WHEREAS, the aforesaid Ordinance No. 108 does not specifically address nor prohibit the riding, operation or other usage of skateboards or other similar recreational devices, implements and vehicles upon any of the sidewalks and/or streets of the City of Buckhannon; and,

WHEREAS, numerous incidents were formerly observed by, or otherwise reported to municipal authorities whereby the safety, health and general well-being of both pedestrians and persons riding or operating skateboards in the commercial areas of the City were endangered; and,

WHEREAS, in response to those former observations and reports, and specifically on October 4, 1990, the Council of the City of Buckhannon passed and adopted Ordinance No. 253 which prescribed criminal penalties for persons riding, operating or otherwise using skateboards, but only within the various commercially zoned districts of the City of Buckhannon; and,

WHEREAS, numerous incidents have continued to be observed, and numerous complaints have been lodged by residents of the City of Buckhannon with municipal authorities alleging (1) that the safety, health and general well-being of both pedestrians and persons riding, operating or otherwise using skateboards, exclusively, in non-commercial areas of the City have been endangered, and further (2) that the property of various residents and business owners alike has been damaged through the reckless riding, operation or other use of skateboards; and,

WHEREAS, the Council of the City of Buckhannon has determined that in order to best protect the safety, health and general well-being of both pedestrians and persons riding or operating skateboards, and further to best protect the property of the City's residents and business owners, that the riding, operation or other use of skateboards and other similar recreational devices, implements and vehicles should be banned and prohibited altogether within all of the various commercially zoned districts of the City of Buckhannon, and further that skateboards, exclusively, should be banned and prohibited from being ridden, operated or otherwise used altogether upon and within any noncommercially situated street, road, alleyway, sidewalk, public parking lot, park or any other municipally, publicly or other governmentally owned, or leased property wheresoever situated within the corporate limits of the City of Buckhannon; and,

WHEREAS, the Council of the City of Buckhannon now deems it to be reasonable, necessary and appropriate to formally prohibit and ban the riding, operation and other usage of skateboards and other similar recreational devices, implements and vehicles in all of the City's commercially zoned districts, and and further to formally prohibit and ban the riding and other usage of skateboards, exclusively, upon and within any noncommercially situated street, road, alleyway, sidewalk, public parking lot, park or any other municipally, publicly or other governmentally owned or leased property situated within the corporate limits of the City of Buckhannon, and further to adopt specific criminal sanctions through the imposition of fines against, the confinement of, and/or the seizure of skateboards from individuals riding or otherwise using skateboards in any herein proscribed area of the City of Buckhannon.

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

FIRST: (A) The riding, operation or other use of skateboards and other similar devices, implements or vehicles within any of the commercially zoned districts and further, the riding, operation or other use of skateboards, exclusively, upon and within any street, road, alleyway, sidewalk, public parking lot, park or any other noncommercially situated, municipally, publicly or other governmentally owned or leased property within the corporate limits of the City of Buckhannon, shall constitute a misdemeanor, criminal offense, and the Council does now further hereby specifically authorize and empower all officers of the City of Buckhannon's Police Department, or any officer of any other police agency exercising proper jurisdiction within the corporate limits of the City of Buckhannon, to arrest and formally charge any person whomsoever violating the skateboard ban and prohibitions hereof.

(B) As used herein, the term "skateboard" shall mean a board, of any material, which has wheels attached to it and which is propelled or moved by human, gravitational, or mechanical power, and to which there is not affixed any device or mechanism to turn and control the wheels.

(C) As used herein, the reference to "other similar recreational devices, implements and vehicles" shall include but not necessarily be limited to "rollerskates" and "rollerblades", either of the last two aforementioned terms meaning any footwear, or device which may be separately attached to both feet or footwear, to which wheels are attached and such wheels may be used to aid the wearer in moving.

(D) As used herein, any ban or prohibition from riding, operating or otherwise using "skateboards and other similar recreational devices, implements and vehicles" shall not include the ban or prohibition from riding, operating or otherwise using bicycles, except insofar as the provisions of Ordinance No. 108 of the City of Buckhannon are concerned, which makes it unlawful for any person to operate any bicycle on any sidewalk on Main Street of Buckhannon.

SECOND: Any person being adjudged guilty of any offense established herein by the Judge, or any jury of the Municipal Court of the City of Buckhannon shall be subject to a fine of not less than Ten Dollars (\$10.00), nor more than Five Hundred Dollars (\$500.00), plus all Court costs, and/or such person shall further be subject, in the discretion of the said Judge, to being sentenced to a term of confinement in the Upshur County Correctional Center, or such other correctional center designated to serve Upshur County, West Virginia, said term not exceeding thirty (30) days. It is further hereby ordained that all of the various Ordinances of the City of Buckhannon which prescribe penalties for individuals committing crimes and offenses within the corporate limits, be amended and changed insofar and insofar only, in the manner as is expressly herein provided.

THIRD: Whenever any law enforcement officer has probable cause to believe that any skateboard was used or is being used in violation of this Ordinance, such skateboard shall be seized as evidence and held until the final disposition of the charge, and in the event that the disposition is one of conviction, such skateboard in any event shall be held and retained by the arresting police agency until any and all fines and court costs imposed are completely paid and satisfied by any such convicted person, unless Article "FOURTH" hereof, is invoked. To avoid any possible misunderstanding, and without limitation of the immediately foregoing provision, any observation by any law enforcement officer that a skateboard is in motion upon the ground or pavement within any proscribed area, whether or not such skateboard is accompanied by any person, shall be sufficient to establish probable cause of a violation of this Ordinance. Probable cause may be established in other manners, as well.

FOURTH: Upon any repeat violation and resulting conviction of this Ordinance, the Judge of the Municipal Court of the City of Buckhannon may order a forfeiture of any skateboard which was ridden or otherwise used in violation of this Ordinance as part of the imposition of sentence against any convicted violator, unless it is proven to the satisfaction of the Judge of the Municipal Court by a preponderance of the evidence that the convicted violator was not the owner of the skateboard at the time that the violation was committed, and further that the true owner thereof did not or could not have reasonably known that such skateboard was being, or would be ridden in violation of this Ordinance.

FIFTH: (A) Notwithstanding any other provision of this Ordinance, it shall not be an offense for any person whomsoever to ride, operate or otherwise use any skateboard or other similar recreational device, implement or vehicle upon any private, noncommercially located property within the corporate limits of the City of Buckhannon.

(B) Notwithstanding any other provision of this Ordinance, it shall not be an offense for any person whomsoever to ride, operate or otherwise use any skateboard or other similar recreational device, implement or vehicle, when such person is a duly registered participant in the annually conducted West Virginia Strawberry Festival, provided that riding, operation or

other such usage occurs in conjunction with the said Festival, and that such usage occurs within or near the parade route as designated by the Festival Association and/or the City of Buckhannon.

(C) Notwithstanding any other provision of this Ordinance, it shall not be an offense for any person whomsoever to ride, operate or otherwise use any skateboard or other similar recreational device, implement or vehicle, when such person is a participant in a duly organized exhibition, authorized by the Council of the City of Buckhannon through the issuance of a permit by the City Council. Application for any permit to conduct any such duly organized exhibition must be made with the Council of the City of Buckhannon not less than thirty (30) days prior to the proposed date for conducting any such exhibition.

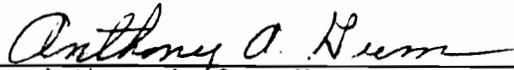
SIXTH: Nothing contained in this Ordinance is intended nor shall be construed so as to create or form the basis of any civil or administrative liability whatsoever on the part of the City of Buckhannon, or any of its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City of Buckhannon, related in any manner to the enforcement or nonenforcement of this Ordinance by the City's officers, employees or agents.

SEVENTH: The parent or other guardian of any child not having attained the age of eighteen (18) years shall not authorize or knowingly permit any such child to violate any provision hereof. Any such authorization or knowingly permitting any such child to violate the provisions of this ordinance shall constitute a criminal violation hereof, and shall subject such parent or other guardian to those same criminal sanctions which are set forth in Paragraph "SECOND" hereof.

EIGHTH: The provisions of this Ordinance are severable and in the event that any provision or part hereof shall be held invalid for any reason, such invalidity shall not be deemed to affect or impair any of the other provisions or parts of this Ordinance not held invalid. It is hereby declared to be the intent of the Council that this Ordinance would have been adopted if any such invalid provision or part hereof had not been included herein.

NINTH: This Ordinance shall be deemed effective thirty (30) days following the second (2nd) reading, adoption and passage by the Council of the City of Buckhannon, i.e., June 18, 1994.

FIRST READING: May 5, 1994
SECOND READING, PASSAGE AND ADOPTION: May 19, 1994



Anthony A. Gum, Mayor

CERTIFICATE OF ENACTMENT

I, Nancy C. Shobe, Recorder of the City of Buckhannon, do hereby certify that the foregoing Ordinance No. 268, was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the Council assembled on May 19, 1994.



Nancy C. Shobe, City Recorder