

ORDINANCE NO. 367 OF THE CITY OF BUCKHANNON, AN ORDINANCE:
(1) AMENDING ORDINANCE NO. 170 OF THE CITY OF BUCKHANNON, i.e.,
BUCKHANNON'S HOUSING ENFORCEMENT ORDINANCE; (2) ADOPTING THE
STATUTORY PROVISIONS OF CHAPTER 8, ARTICLE 12, SECTION 16a. OF THE
WEST VIRGINIA CODE, AS AMENDED, ENTITLED "REGISTRATION OF
UNINHABITABLE PROPERTY"; AND (3) ADOPTING THE STATUTORY PROVISIONS
OF CHAPTER 8, ARTICLE 12, SECTION 16c. OF THE WEST VIRGINIA CODE, AS
AMENDED, ENTITLED "REGISTRATION OF VACANT BUILDINGS; REGISTRATION
FEES; PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT"

WHEREAS, the provisions of Chapter 8, Article 12, Section 16 of the West Virginia Code, as amended, confer plenary power and authority upon municipalities, including The City of Buckhannon, to adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and,

WHEREAS, the Council of the City of Buckhannon adopted Ordinance No. 170, sometimes referred to as the City of Buckhannon's Housing Enforcement Ordinance, that was effectuated on July 15, 1974; and,

WHEREAS, the State Legislature amended the immediately foregoing authorizing state statute in 2008; and,

WHEREAS, the Council desires to amend the City's Housing Enforcement Ordinance to incorporate the amendments to the authorizing state statute

WHEREAS, the State Legislature further enacted (1) the provisions of Chapter 8, Article 12, Section 16a. of the West Virginia Code, entitled "Registration of uninhabitable property" in 2008, and (2) the provisions of Chapter 8, Article 12, Section 16c. of the West Virginia Code, entitled "Registration of vacant buildings; registration fees; procedures for administration and enforcement" in 2010; and,

WHEREAS, the Council desires to implement by ordinance the statutory provisions of both Chapter 8, Article 12, Section 16a. and 16c. of the West Virginia Code; and,

WHEREAS, the Council of the City of Buckhannon is committed to becoming more vigilant respecting all matters involving dwellings or buildings determined to be

unfit for human habitation, or alternatively vacant buildings or other structures due to said dwellings, buildings or other structures threatening the health, safety and general welfare of the residents of the City of Buckhannon.

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

ARTICLE I – ADOPTION OF AMENDED HOUSING ENFORCEMENT ORDINANCE:

Section 1: There is hereby created the City of Buckhannon Housing Enforcement Board which shall consist of the Mayor, the City Engineer, and one member at large to be selected by and to serve at the will and pleasure of the Council of the City of Buckhannon. The City Health Officer and Fire Chief shall serve as ex officio members of the Housing Enforcement Board, but shall have no voting rights or privileges on the Board.

Section 2: The Council of the City of Buckhannon shall designate and appoint an officer to be known as the City of Buckhannon Housing Enforcement Officer. The Housing Enforcement Officer shall exercise the powers herein granted along with any and all other powers currently granted or as may be granted in the future to such officer pursuant to the statutory provisions of Chapter 8, Article 12, Sections 16, 16a., and 16b. of the West Virginia Code, as amended. The Housing Enforcement Officer shall serve at the will and pleasure of the City Council. The Housing Enforcement Officer may or may not be one and the same person as the City of Buckhannon's Zoning Officer. The Housing Enforcement Officer shall be paid such compensation as may be prescribed by the City Council.

Section 3: The Housing Enforcement Officer is charged with the responsibility and authority to formally investigate any and all dwellings or other buildings or structures alleged to be unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or other buildings or structures, whether used for human habitation or not, which would cause such dwellings or other buildings or structures to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare. The initiation of any investigation by the Housing Enforcement Officer may occur either (a) as a consequence of the Housing Enforcement Officer's own observation; (b) from a citizen complaint lodged with the Housing Enforcement

Officer or (c) as referred by the City Council. The Housing Enforcement Officer in conducting investigations or discharging any duties established pursuant to this Ordinance shall have the right upon granting reasonable notice to the occupants thereof, i.e., a minimum of twenty-four (24) hours written notice delivered to the occupants thereof, to enter upon and within at all reasonable times, any lots, dwellings and other buildings and structures situated within the corporate limits of the City of Buckhannon. Any entrance upon or within any premises by the Housing Enforcement Officer for the purpose of making any investigation authorized by this Ordinance shall be made in a manner as to cause the least possible inconvenience to the persons in possession of the premises. In the event that there are no occupants of the premises to be investigated, then reasonable written notice shall be delivered to the owner of the premises.

Section 4: (A) Upon any determination by the Housing Enforcement Officer that any dwelling or other building or structure is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or other buildings or structures, whether used for human habitation or not, which would cause such dwellings or other buildings or structures to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, the Housing Enforcement Officer then promptly shall submit to the Housing Enforcement Board a written, preliminary report concerning the condition of such dwelling or other building or structure and the Housing Enforcement Board thereafter shall conduct a hearing respecting the investigation and report.

(B) Written notice of not less than ten (10) days shall be served upon both the owner and any occupants of the premises, and which notice shall establish: (a) the date, time and place for the hearing; (b) the nature of the complaint; (c) the opportunity of the owner and/or occupants to present testimony and other evidence concerning the matter; and (d) the possible ordering by the Housing Enforcement Board of the razing and demolition of the dwelling or other building or structure if the violating conditions are not abated within a reasonable period of time, i.e., a minimum of thirty (30) days following the hearing date and commencement of razing and demolition.

(C) The hearing before the Housing Enforcement Board on the matter shall be an informal hearing and strict rules of procedure or evidence shall be followed

or required. The owner and/or occupants may be represented by legal counsel. Any owner or occupant of the premises involved, or their legal counsel, or any other interested person, shall have the right to examine the written report of the Housing Enforcement Officer and further shall have the right to file a written answer to such report and to appear in person or by counsel, and offer testimony and other evidence at the time and place fixed in the notice for the hearing on the matter.

Section 5: If following the hearing, the Housing Enforcement Board determines by a majority vote that the investigated dwelling or other building or structure is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or other buildings or structures, whether used for human habitation or not, which would cause such dwellings or other buildings or structures to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, then the Housing Enforcement Board shall state in writing its findings of fact in support of such determination, and then shall issue and cause to be served upon the owner, occupants and any other interested parties, an order requiring the owner to undertake the following:

- (A) The repair, alteration or improvement of the dwelling or other building or structure within a specified time to permit the repair, alteration or improvement of the premises so as to abate the violating conditions, said repair, alteration or improvement period to be a minimum of thirty (30) days, or
- (B) The razing, demolition and removal of the dwelling or other building or structure.

Section 6: (A) If the owner fails to comply with the order of the Housing Enforcement Board to repair, alter or improve, or alternatively to raze, demolish and remove the dwelling or other building or structure, the Housing Enforcement Board may cause said dwelling or other building or structure to be repaired, altered or improved, or to be vacated and closed from and after the date specified in the order of the Housing Enforcement Board for the repair, alteration or improvement of the premises. The Housing Enforcement Officer then shall cause to be posted upon the premises a notice bearing the following: "This building has been determined to be unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other

calamities, lack of ventilation, light or sanitary facilities or other conditions prevailing in the dwelling or other building or structure, whether used for human habitation or not, which would cause such dwelling or other building or structure to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare. The use or occupancy of this dwelling or other building or structure is prohibited and unlawful.” (B) If the owner fails to comply with an order of the Housing Enforcement Board to repair, alter or improve, or raze, demolish and remove, the Housing Enforcement Board may cause such dwelling or other building or structure to be razed, demolished and removed upon such conditions as the Housing Enforcement Board may prescribe and at the exclusive cost and expense of the owner thereof.

Section 7: All costs of any repairs, alterations, improvements, vacating, closing, razing, demolition and/or removal of any dwelling or other building or structure under orders of the Housing Enforcement Board shall constitute a lien against the subject real estate upon which such costs were incurred. Any and all cost incurred respecting asbestos inspection and/or abatement shall be deemed to be a cost of any razing, demolition and/or removal. If the dwelling or other building or structure is razed, demolished and removed by the Housing Enforcement Board, the Board shall attempt to sell such materials from such premises as can be salvaged and shall credit the proceeds of such sale against the cost of the razing, demolition and removal.

Section 8: All notices or orders issued by the Housing Enforcement Board shall be served upon the owner and/or occupants thereof in such a manner as prescribed by the laws of the State of West Virginia for service of legal documents, and in addition thereto, all such notices and orders shall be posted in a conspicuous place upon the premises. A copy of all such complaints or orders further shall be filed for record in the Office of the Clerk of the County Commission of Upshur County, West Virginia, and such filing shall be deemed to have the same legal force and effect as a lis pendens notice authorized pursuant to the laws of the State of West Virginia.

Section 9: Any owner or other person affected by an order issued by the Housing Enforcement Board may petition the Circuit Court of Upshur County, West Virginia for an injunction restraining the Housing Enforcement Board and/or the Housing Enforcement Officer from carrying out the provisions of such order, and the Housing Enforcement Board and/or Housing Enforcement Officer shall fully comply in all respects with any order issued by the Circuit Court in connection with any injunction

hearing. The City Attorney shall represent the Housing Enforcement Board and/or Housing Enforcement Officer in any such proceedings before the Circuit Court.

Section 10: (A) The owner or other person exercising dominion or control over any dwelling or other building or structure determined by the Housing Enforcement Board to be unfit for human habitation, and who shall fail to comply with any order of the Housing Enforcement Board, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

(B) Any occupant or lessee or any other person who fails to comply with any order to vacate any dwelling or other building or structure, or who remains in occupancy or possession of any building or structure that has been ordered to be vacated, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

(C) Any person who removes any notice or order of the Housing Enforcement Board posted as required pursuant to this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

(D) Any person who obstructs, impedes or interferes with the Housing Enforcement Officer or any other person in their performance and discharge of duties and requirements of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

Section 11: No officer, agent or employee of the City of Buckhannon, or any member of the Housing Enforcement Board of the City of Buckhannon or the Housing Enforcement Officer shall be held personally liable for any damage incurred or alleged

to have been incurred as a result of any act required, permitted or authorized to be performed in the discharge of duties pursuant to this Ordinance or any notice or order issued by the Housing Enforcement Board. Any suit brought against any such officer, agent or employee of the City, or any member of the Housing Enforcement Board or the Housing Enforcement Officer shall be defended by the City of Buckhannon.

ARTICLE II – REGISTRATION OF UNINHABITABLE PROPERTY:

Section 1: There is hereby created the City of Buckhannon’s Registry of Uninhabitable Property. The owner of any real property improved by a structure that has been determined to be uninhabitable and violates the City’s Building Code shall register their property with the Housing Enforcement Officer, said Housing Enforcement Officer being hereby specifically designated and appointed by the City Council as being the City’s Code Enforcement Officer.

Section 2: The Housing Enforcement Officer shall investigate and determine whether any real property situated within the corporate limits violates the provisions of the City’s Building Code.

Section 3: After inspecting property, if the Housing Enforcement Officer determines the property is uninhabitable and violates the City’s Building Code, then:

(A) The Housing Enforcement Officer shall post a written notice on the property which shall include: (1) an explanation of the violation(s); (2) a description of the registration; (3) the date the fee will be assessed; (4) an explanation of how to be removed from the registration; (5) an explanation of the appeals process; (6) a statement that if the fee is not paid, then the property is subject to forfeiture; and,

(B) Within five (5) business days of the inspection and the posting of property, the Housing Enforcement Officer shall by certified mail, send a copy of the notice that was posted to the owner(s) of the property at the last known address according to the county property tax records.

Section 4: Within forty-five (45) days of receipt of the notification by the owner(s), the property owner may: (A) Make and complete any repairs to the property that violate the City’s Building Code; or (B) Provide written information to the officer showing that repairs are forthcoming in a reasonable period of time.

Section 5: After the repairs are made, the owner may request a reinspection of the property to ensure compliance with the applicable building code. If the Housing

Enforcement Officer finds the violations are fixed, the owner is not subject to the registration and no fee will be incurred.

Section 6: The Housing Enforcement Officer may reinspect the property at any time to determine where in the process the repairs fall.

Section 7: Within ninety (90) days of receipt of the notification by the owner(s), the property owner has the right to appeal the decision of the officer to the Housing Enforcement Board.

Section 8: If an appeal is not filed within ninety (90) days, the property is registered and the fee is assessed to the owner(s) on the date specified in the notice. The notice of the fee shall be recorded in the Upshur County Clerk's Office.

Section 9: If the Housing Enforcement Board affirms the registration and assessment of the registration fee, the property owner has the right to appeal the decision of the enforcement agency to the Upshur County Circuit Court within thirty (30) days of the decision. If the decision is not appealed in a timely manner to the circuit court, then the property is registered and the fee is assessed on the date specified in the notice. The notice of the fee shall be recorded in the Upshur County Clerk's Office.

Section 10: After all fees are paid, and at such time as the property is no longer determined to be uninhabitable either as a result of improvements to the property that make the property habitable, or the uninhabitable structure being razed and removed, the municipality shall record a release of the fee in the Upshur County Clerk's Office.

Section 11: If an owner fails to pay the fee, then the Housing Enforcement Officer shall annually post the written notice on the property and send the written notice to the owner(s) by certified mail.

Section 12: If a registration fee remains delinquent for two years from the date it was placed on record in the Upshur County Clerk's Office, the City may take action to receive the subject property by means of forfeiture. In the event the City takes the steps necessary to receive the subject property, the City then becomes the owner of record and takes the property subject to all liens and real and personal property taxes.

Section 13: An owner subject to property registration pursuant to this Article II, shall be assessed a monthly fee in the amount of \$0.02 per square foot of the uninhabitable structure, said square footage to be determined from the records maintained by the Upshur County Assessor's Office.

Section 14: Any and all funds realized from the imposition of the fee authorized pursuant to this Article II are hereby declared to be dedicated to a special account to be established by the City Treasurer for the purpose of facilitating the City's razing, demolition and removal of uninhabitable dwellings and other buildings and structures situated within the corporate limits, or may otherwise be expended to discharge the functions, duties and expenses of the City's Housing Enforcement Board and/or Housing Enforcement Officer.

ARTICLE III – REGISTRATION OF VACANT BUILDINGS; REGISTRATION FEES; PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT:

Section 1: There is hereby created the City of Buckhannon's Registry of Vacant Buildings. For purposes of this Article III, the term "vacant building" means a building or other structure that has been unoccupied for six months or longer, or unsecured and occupied by one or more unauthorized persons for six months or longer, PROVIDED, that a new building under construction or a building that by definition is exempted by ordinance of the municipality, is not deemed a vacant building: PROVIDED FURTHER, however, that the City Council shall on a case by case basis, upon the written request of the property owner, exempt vacant buildings from registration upon a finding for good cause shown that a person will be unable to occupy the buildings for a determinate period of time.

Section 2: An owner subject to property registration pursuant to this Article III, shall be assessed a monthly fee in the amount of \$0.01 per square foot of all vacant buildings, said square footage to be determined from the records maintained by the Upshur County Assessor's Office.

Section 3: Any owner subject to property registration pursuant to this Article III upon six months of their property becoming vacant, shall register their property as being vacant with the City's Housing Enforcement Officer. The Housing Enforcement Officer shall determine the appropriate monthly fee after conferring with the Upshur County Assessor's Office.

Section 4: In any event that the owner of a vacant building resides outside the State of West Virginia, then the owner shall designate a person residing within the State who shall be authorized to accept service of process and notices of fees due and owing pursuant to this Article III on behalf of the owner and who shall be designated by the owner as a responsible, local party or agent for the purposes of notification in the event

of any emergency affecting the public health, safety or welfare as attributable to the owner's vacant building.

Section 5: The City is authorized to institute a civil action against the owner of any vacant property and/or file a lien on real property for unpaid and delinquent vacant building registration fees. Before any lien is filed, the City shall give notice to the property owner or owner's agent, by certified mail, return receipt requested, stating that the City will file the lien unless the delinquent fees are paid by a date stated in the notice, which shall be not less than thirty (30) days from the date the notice is received by the owner or the owner's agent, which shall be the date of delivery shown on the signed certified mail return receipt card. If service of the notice cannot be attained by certified mail, notice may be affected by posting of the notice at the property or by publication.

Section 6: Within thirty (30) days of receipt of the notification by the owner(s), the property owner has the right to appeal the decision of the officer to the Housing Enforcement Board.

Section 7: If an appeal is not filed within thirty (30) days, the property is registered and the fee is assessed to the owner(s) on the date specified in the notice.

Section 8: If the Housing Enforcement Board affirms the registration and assessment of the registration fee, the property owner has the right to appeal the decision of the enforcement agency to the Upshur County Circuit Court within thirty (30) days of the Board's decision. If the decision is not appealed in a timely manner to the circuit court, then the property is registered and the fee is assessed on the date specified in the notice.

Section 9: The City shall deposit all fees collected pursuant to this Article III into a special account, which funds shall be used to:

- (A) improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties;
- (B) monitor and administer this Article III; and,
- (C) repair, close or demolish a vacant structure as authorized pursuant to Article I of this Ordinance.

ARTICLE IV – SEVERABILITY: The provisions of this Ordinance are severable and if any provision or part thereof shall be held invalid for any reason by a court of

competent jurisdiction, such invalidity shall not affect or impair any of the other provisions or parts of this Ordinance. It is hereby declared to be the intent of the City Council that this Ordinance nevertheless would have been adopted if such invalid provision or part thereof had not been included herein.

ARTICLE V - EFFECTIVE DATE: This Ordinance shall be deemed effective thirty (30) days following the third (3rd) reading, passage and adoption by the Council of the City of Buckhannon, i.e., September 15, 2012.

FIRST READING:	July 19, 2012
SECOND READING:	August 2, 2012
THIRD READING, PASSAGE & ADOPTION:	August 16, 2012

Kenneth T. Davidson, Mayor

CERTIFICATE OF ENACTMENT

I, Richard C. Clemens, City Recorder, do hereby certify that the foregoing Ordinance No. 367 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on August 16, 2012.

Richard C. Clemens, City Recorder