

ORDINANCE NO. 372 OF THE CITY OF BUCKHANNON, AN ORDINANCE:
(1) PROHIBITING SMOKING AND THE USE OF ALL OTHER TOBACCO PRODUCTS
IN ALL CITY-OWNED PARKS AND RECREATIONAL FACILITIES; AND
(2) ESTABLISHING PENALTIES FOR PERSONS VIOLATING THE PROVISIONS OF
THIS ORDINANCE

WHEREAS, the United States Surgeon General and other authoritative public health authorities have determined that involuntary inhalation of tobacco smoke: (1) is a cause of numerous diseases in healthy non-smokers; (2) is a major contributor to air pollution; (3) places children, unborn children of pregnant women, elderly people, and individuals with cardiovascular and/or respiratory disease at special risk; (4) is a trigger for acute episodes of respiratory distress and myocardial infarction; (5) increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers; (6) burdens the healthcare system by increasing the number and frequency of required hospital admissions and emergency visits thereby increasing the public and private expenditures required for the treatment; (7) reduces the life expectancy of persons consistently exposed to secondary smoke; and (8) causes substantial losses in productivity through smoking related absences from work and school; and,

WHEREAS, the Council of the City of Buckhannon believes that smoking and the use of other tobacco products occurring in the proximity of children and adults participating in or attending outdoor activities as spectators at City-owned parks and other recreational facilities is harmful to participant and spectator health and is often offensive to those persons using such facilities; and,

WHEREAS, the City of Buckhannon is authorized to create and sustain a tobacco-free environment through adoption of a no-smoking and tobacco-free policy within all parks and other outdoor recreational facilities owned by the City; and,

WHEREAS, the City of Buckhannon believes parents, leaders, and officials involved in recreation are role models for youth and should have a positive impact upon the lifestyle choices youth make; and,

WHEREAS, the tobacco industry often advertises at, and/or sponsors recreational events to foster a connection between tobacco use and recreation; and,

WHEREAS, cigarettes and other tobacco products, once consumed in public places, are often discarded on the ground resulting in: (1) additional maintenance expenses; (2) diminution of the attractiveness of the City's parks and other recreational facilities; and (3) risks posed to young children due to ingestion of the discarded products; and,

WHEREAS, Chapter 8, Article 12, Section 5(13) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; and,

WHEREAS, Chapter 8, Article 12, Section 5(19) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent; and,

WHEREAS, Chapter 8, Article 12, Section 5(23) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance; and,

WHEREAS, Chapter 8, Article 12, Section 5(44) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to protect and promote the public morals, safety, health, welfare and good order; and,

WHEREAS, Chapter 8, Article 12, Section 5(48) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to investigate and inquire into all matters of concern to the municipality or its inhabitants; and,

WHEREAS, Chapter 8, Article 12, Section 5(58) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to provide penalties for the offenses and violations of law mentioned in 8-12-5 of the Code; and,

WHEREAS the Council of the City of Buckhannon has determined that the prohibition of tobacco use at the City's parks and recreational facilities serves to protect the health, safety and welfare of the citizens of Buckhannon.

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

ARTICLE I – FINDINGS OF COUNCIL:

(A) The Council is authorized to protect the public health and welfare by prohibiting smoking and the use of other tobacco products sometimes referred to as smokeless tobacco in certain public places;

(B) When the need to breathe smoke-free air conflicts with the desire to smoke, the need to breathe smoke-free air shall have priority;

(C) It is a proper function of municipal government to promote smoking cessation by active smokers;

(D) It is a proper function of municipal government to discourage non-smokers from taking up any tobacco use habit and from developing a nicotine addiction; and,

(E) The adoption of a comprehensive ordinance designed to eliminate smoking and the use of all other tobacco products in City parks and other recreational facilities will greatly aid the protection of the citizenry and promote the public morals, safety, health, welfare and good order of our Buckhannon community.

ARTICLE II – DEFINITIONS: The following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

(A) "Smokeless tobacco" means tobacco that is not smoked but is used in another form such as chewing tobacco or snuff. Cancers of the oral cavity (mouth, lip, tongue) have been associated with the use of chewing tobacco as well as snuff. The tumors often arise at the site of placement of the tobacco. Smokeless tobacco was formally classified as a "known human carcinogen" by the U.S. government in 2000.

(B) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an electronic cigarette which creates a vapor, in any manner or in any form, or the use

of any oral smoking device for the purpose of circumventing the prohibition of smoking in this regulation.

(C) “Tobacco products” means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, among other products, cigarettes, cigarette tobacco, roll-your-own tobacco, cigars, pipes, and smokeless tobacco.

ARTICLE III – PROHIBITED ACTIVITIES: Smoking or the use of any tobacco product shall be prohibited in the following outdoor, public places within the corporate limits of the City of Buckhannon, Upshur County, West Virginia:

- (1) All municipally owned or operated parks and outdoor, recreational facilities, including but not limited to the Poundstone Memorial River Trail, Jawbone Park, the City Park on Park Street, and the North Buckhannon Park;
- (2) Upon the grounds of the City’s Stockert Youth Center;
- (3) Upon the grounds of the City’s Gibson Memorial Library;
- (4) All areas where fairs and festivals are conducted, including but not limited to the annual West Virginia Strawberry Festival and Festival Fridays at Jawbone Park; and,
- (5) Within all inside or interior places that constitute accessory uses to any of the foregoing (1) – (4) including but not limited to restrooms, fully or partially enclosed pavilions, sheds, outbuildings, etc.

ARTICLE IV – PENALTIES: Any person found guilty before the Municipal Court of the City of Buckhannon of violating any provision of this Ordinance as defined herein shall be deemed to be guilty of a misdemeanor offense, and shall be punished by a fine as follows: \$50.00 for the first offense within a 24-month period; \$100 dollars for a second offense within a 24-month period; \$200 dollars for a third offense within a 24-month period; \$400.00 dollars for a fourth offense within a 24-month period and \$500.00 dollars for a fifth and each subsequent offense within a 24-month period.

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

ARTICLE VI- EFFECTIVE DATE: This Ordinance shall be deemed effective thirty (30) days following the second (2nd) reading, passage and adoption by the Council of the City of Buckhannon, i.e., May 4, 2013.

FIRST READING: March 21, 2013

SECOND READING, PASSAGE AND ADOPTION: April 4, 2013

Kenneth T. Davidson, Mayor

CERTIFICATE OF ENACTMENT

I, Richard C. Clemens, City Recorder, do hereby certify that the foregoing Ordinance No. 372 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular session of the said Council assembled on April 4, 2013.

Richard C. Clemens, City Recorder