

**CITY OF BUCKHANNON**

**MUNICIPAL HOME RULE  
PILOT PROGRAM PHASE II  
APPLICATION**



**SUBMITTED TO THE WEST VIRGINIA  
MUNICIPAL HOME RULE BOARD**

# Municipal Home Rule Pilot Program Phase II APPLICATION

<b>SECTION I: APPLICANT INFORMATION</b>	
<b>A. General Information</b>	
Name of Municipality: <b>City of Buckhannon</b>	
Certifying Official: <b>Kenneth T. Davidson</b>	Title: <b>Mayor</b>
Contact Person: <b>Michael W. Doss</b>	Title: <b>City Administrator</b>
Address: <b>70 E. Main Street</b>	
City, State, Zip: <b>Buckhannon, West Virginia 26201</b>	
Telephone Number: <b>304-472-1651</b>	Fax Number: <b>304-472-4620</b>
E-Mail Address: <b>Mayor@buckhannonwv.org</b>	
2010 Census Population: <b>5,639</b>	
<b>B. Municipal Classification</b>	
<input type="checkbox"/> Class 1 <input type="checkbox"/> Class II <input checked="" type="checkbox"/> Class III <input type="checkbox"/> Class IV	
<b>C. Category of Issues to be Addressed (please attach descriptions for applicable categories)</b>	
<input checked="" type="checkbox"/> Tax <input type="checkbox"/> Organization <input checked="" type="checkbox"/> Administration <input checked="" type="checkbox"/> Personnel	

<b>SECTION II: NARRATIVE (written plan, including the following) See Attachments</b>
<p>Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.</p> <p>Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.</p> <p>Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:</p> <ol style="list-style-type: none"> <li>1) Proposed solution(s) in one of the four areas (tax/administrative/organization/personnel)</li> <li>2) Estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.</li> </ol>

<b>SECTION III: AFFIDAVITS See Attachments</b>
Hearing Mandate Verification Publication Mandate Verification Ordinance Authorizing Submission of Plan Fiscal Impact Worksheets/Formulas Feasibility Study (if taxes are proposed) Attorney Opinion (application complies with statutory requirements) State of West Virginia Fees Statement (none outstanding) Agreement to Requirements Statement (firearms, ammunition and firearm accessories)

## **Requirements Concerning Firearms, Ammunition and Firearm Accessories**

**Definitions:** As used in this subsection:

- (A) Ammunition means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.
- (B) Firearm accessory means a device specifically designed or adapted to enable the wearing or carrying about one's person, or the storage or mounting in or a conveyance, of a firearm, or an attachment or device specifically designed or adapted to be inserted into or affixed onto a firearm to enable, alter or improve the functioning or capabilities of the firearm.
- (C) Firearm has the same meaning as in W. Va. § 61-7-2.

**General Rule:**

- (A) Municipalities participating in the Municipal Home Rule Pilot Program may not restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle, or shotgun, or indirectly prohibit the ownership of the ammunition, or, to restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any other firearm accessory or accouterment, under any order, ordinance or rule promulgated or enforced by the municipality. This rule may not be construed to prevent any law enforcement official with appropriate authority from enforcing any statute enacted by the state.
- (B) The authority of a municipality to regulate firearms, ammunition, or firearm accessories may not be inferred from its proprietary authority, home rule status or any other inherent or general power.
- (C) Any existing or future orders, ordinances, or rules promulgated or enforced in violation of this subsection are null and void.
- (D) A municipality may regulate the carrying of a firearm in municipal buildings dedicated to government operations, other than parking buildings or garages.

**Applicability and Effective Dates:**

Ninety days after a new municipality has been selected by the Board to participate in the pilot program, or a previously participating municipality has chosen to continue to participate in the pilot program, any municipal gun ordinances previously authorized by the provisions of section five-a, article twelve, chapter eight of this code shall no longer be of any force or effect for any municipality participating in this program, to the extent they are in conflict with the provisions of this subsection: Provided, that no provision in this subsection may be construed to limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinance.

**Certifying Official Signature (Mayor or designee):**     **Kenneth T. Davidson, Mayor**

# City of Buckhannon Home Rule Application

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## **Background**

Nestled in the heart of north central West Virginia, Buckhannon is located just miles from Interstate 79 and along U.S. Route 33. Our community offers the simplicity of small town life with the benefit of specialty and antique shops, restaurants, Civil War heritage and cultural experiences. Buckhannon's Main Street is a registered Historic District and hosts numerous community events year-round including the WV Strawberry Festival and Festival Fridays

Buckhannon's arts district includes a retail outlet for local artists, a micro-theatre and a performing arts center on the campus of West Virginia Wesleyan College that hosts numerous productions including Mountain Stage performances, Jazz performances and theatre productions. Every September, the Main Street Arts Festival celebrates Buckhannon's local art organizations and talented artists. Outdoor recreation can be found within Buckhannon's city limits. The Buckhannon River is known as one of the best musky fishing locations in the nation and has multiple entries for small boats and kayaks. Our scenic parks are great spots for picnics, walking, biking and more.

Though the City of Buckhannon promotes its distinctiveness and individual history, it is not too dissimilar from other cities in West Virginia. As with all cities in the state, the City of Buckhannon and its elected representatives are committed to providing the best service possible to our residents and visitors in a cost effective manner. The attractiveness of participating in the West Virginia Home Rule Program ensures that Buckhannon continues to search for better and more innovative methods to effectively provide the most efficient services for our community. Additionally, the city desires to seek more progressive and more practical methods for creating jobs, investing in economic development, maintaining clean neighborhoods and providing safe communities while broadening our ability to increase revenues.

Contained within our home rule application, committee members will observe four proposals that at the core exemplify and embody the spirit of home rule in West Virginia. These four unique and advanced proposals focus on the following themes:

- Economic Development and Tax Incentives
- Nuisance Property and Abatement Solutions
- Allocation and Enhancement of Public Safety Resources
- Equipment and Real Estate Property

## **Municipal Classification**

The City of Buckhannon has a population of 5,639 (2010 U.S. Census) and is classified under West Virginia Code § 8-1-3 (3) as a Class III city.

## I. Enterprise Zone - Municipal Real and Personal Property Rebates, and B & O Tax Exemptions

***Category of Issue to be Addressed:*** Tax

***Specific state laws, policy rule, or regulation in question:***

- West Virginia Code Chapter 8, Article 13A
- West Virginia Code Chapter 8, Article 38

***Specific Problem:***

The escalation in competition to attract new commercial and industrial businesses as well as retain and/or expand existing businesses has become a challenge for municipalities in West Virginia and throughout the United States. The interstate competition coupled with economic development incentives offered by other municipalities in other states has created a substantial limitation in attracting new economic growth to the City of Buckhannon as well as other municipalities in West Virginia. Municipalities in other neighboring states such as Ohio, Pennsylvania and Virginia have the ability to offer a variety of tax incentives, utility incentives and property development opportunities that municipalities in West Virginia do not have the ability to offer and/or are limited under West Virginia State Code.

Without the ability to offer tax incentives that only exclusively impact the immediate revenue collection for the municipality, municipalities around the state continue to stand idly by as other municipalities in surrounding states secure new and/or expanding commercial and industrial businesses. The result directly impacts the positive growth of the municipality and prohibits new tax and job resources for both the municipality and the State of West Virginia.

***Specific Solution:***

Under Home Rule, The City of Buckhannon will be authorized to designate developmental areas within the municipal corporate limits to be an “Enterprise Zone,” and therefore be enabled to provide qualifying companies with municipal real and personal property tax rebates together with B & O tax exemptions of up to 100% for a period of up to five years depending upon the extent of the new or expanded construction.

The City's objectives in establishing the Enterprise Zone is to create new, and retain existing jobs within the City; to encourage new capital investment; improve competitiveness; increase other local revenues; and generally improve the economic climate of the City. The benefits for an eligible company will be a multi-year scaled rebate in their municipal real and personal property and exemptions in their B & O taxes which may be applied to off-set start-up or expansion costs, and improve the company's competitive advantage vis-<sup>^</sup>-vis their competitors. The purpose of this program is to encourage both new and existing commercial or industrial businesses to invest within the City of Buckhannon by lessening real and personal property taxes for a period of time, i.e., up to five years depending on the project and local investment in jobs creation and capital.

The designation of an “Enterprise Zone” will result in qualifying, commercial or industrial businesses receiving full municipal real and personal property tax rebates, and full B & O tax exemptions on qualifying investments for new construction or expansion for commercial or industrial businesses.

The addition of an “Enterprise Zone” will provide the City of Buckhannon with an even better ability to attract new business to the community, while rewarding the expansion of existing businesses through introduction of substantial, economic development tax incentives. Through home rule, the City of Buckhannon will expand on those existing economic development incentives already permitted in West Virginia, e.g., pursuant to WV Code Chapter 8, Article 13A (Business Improvement Districts) and WV Code Chapter 8, Article 38 (Municipal Economic Opportunity Development Districts).

The Buckhannon Enterprise Zone Program will offer an economic development tool administered by the municipal government that provides for real and personal property tax rebates to businesses making substantial investments within the corporate limits of the City. Buckhannon has long established itself as being a progressive, pro-business municipality as evidenced by its innovative B & O tax structure that exempts all retail businesses from B & O tax payment respecting the first million dollars of annual, gross revenue. The Enterprise Zone will simply expand tax incentives for business to locate or expand in Buckhannon.

The property tax “rebate,” will not require any special or additional services to be performed by any other agency of government, i.e., neither the Upshur County Assessor, Sheriff’s Office, nor shall any State agency be tasked with any additional duties. Upon presentation to the City Treasurer of proof of property tax payment by a business whose location or expansion plan had been previously filed and officially approved by Buckhannon’s City Council, and further following the City’s receipt of its distributive share of ad valorem taxes from Upshur County, then, that business taxpayer pursuant to a formula approved by the City Council would realize a full refund from the City of the municipal tax portion only of the business’s total property tax bill paid. The duration of this “rebate” program could be for as long as five years depending upon the quantity of investment in facilities constructed or expanded, and jobs created within the City. The rebate program would be capped at a maximum of five years up with a maximum annual rebate percentage of 100% pending the eligibility of the business and contingent upon said business meeting the qualifying requirements and adhering to the terms.

In addition to the property tax “rebate” on real and personal property, the City of Buckhannon proposes that B&O tax exemption incentive be provided to new and/or expanding commercial and industrial businesses. The City of Buckhannon’s B&O tax exemption incentive would include a similar formula as the one established in the property tax “rebate”. The B&O tax incentive under the Enterprise Zone would effectively provide a business with 100% annual tax exemption for a maximum of five years pending the eligibility of the business and contingent upon said business meeting the qualifying requirements and adhering to the terms. This tax exemption would include all B&O classifications as prescribed under West Virginia Code.

Different from the property tax “rebate” discussed above, the municipal B & O tax is assessed, collected, and administered entirely by Buckhannon’s municipal government pursuant to the City’s several B & O tax ordinances, without any involvement by any county or state agency, other than occasional administrative consultation or information sharing with the West Virginia Department of Tax and Revenue. Some business enterprises would benefit far more from the B & O tax exemption versus the property tax rebate.

For instance, a business entity might consider locating in Buckhannon whose business plan does not require a large investment in property acquisition or development of structures, but whose capital investment is more directed toward employee training and/or startup inventory acquisition. A maximum five year, full exemption of municipal B & O taxes may well prove the difference in especially new enterprises being able to sustain themselves and grow their businesses. Application for the municipal B & O exemption further could be made by existing businesses seeking to substantially expand their operations within the City, e.g., offering a new product line, or acquiring new equipment for fabrication purposes, or converting equipment to more energy efficient, sustainable methods.

### **MINIMUM QUALIFYING REQUIREMENTS:**

Applicants must demonstrate that their new location or expansion project shall:

- increase the value of their real and/or tax assessable personal property by at least \$500,000 upon completion; or
- result in a capital investment including construction of at least \$500,000 upon completion; or
- increase the number of full-time jobs by 15 or more persons.

### **ELIGIBLE PROJECTS:**

Eligible property tax rebated and B & O tax exempted property may include buildings, structures, vehicles, machinery and equipment, site improvements, office and related property (if occupying leased premises) necessary for operation of the facility.

Modernization for the purpose of replacing or upgrading existing facilities that increase the production input or output, or that updates technology or substantially lowers the unit cost of the operation or that is sustainable, i.e., “green friendly” initiatives, may be considered and in fact will be encouraged.

### **TERMS:**

When municipal, real and personal property tax rebates and/or B & O tax exemptions are available, they will be offered pursuant to the following, general limits and guidelines:

- For typical commercial and industrial property tax rebates and/or B & O tax exemptions, the City will negotiate a credit scale and duration of rebates and/or exemptions based primarily upon the investment level and full-time job creation. Each project will be evaluated individually, and the tax incentives tailored to an analysis based upon such factors as industry competitive disadvantages, quantifiable economic impacts, and furthering other public purposes in unique ways. Applicants then would be required to submit an economic impact analysis using reliable modeling tools.

Depending on the analysis of such factors and data, the City then would evaluate the appropriate level and duration of tax rebates and exemptions;

- The City would be inclined to offer more favorable consideration to applicants committing to other community benefits, such as the city's Minority and Women/Disadvantaged Business Enterprise Program, local purchasing, i.e., within Upshur County, of materials, vehicles, and equipment, construction and permanent employment job opportunities within a reasonably defined area, and employee health care benefits, and for energy conscious and environmentally sustainable programs;
- An annual extended rebate and tax exemption of up to 100% for an additional two years might be considered for targeted industry clusters, such as those in biotechnology, information technology, aerospace, energy, natural resources and other industries that the City from time to time identifies as having a particularly positive impact on the Buckhannon-Upshur economy.

#### OTHER REQUIREMENTS AND RECAPTURE PROVISIONS:

- Any business whose application for property tax rebate and B & O tax exemption has been formally approved by the City Council shall be required thereafter to file a quarterly report during each year of the term approved by the City Council demonstrating that the project is meeting the goals set forth in the previously approved application.
- If during any quarterly report filing, it is determined in the exclusive discretion of the City Council that a successful applicant's project then has failed to satisfy the business's approved application, or if the business defaults on any terms, conditions or warranties contained in the rebate/exemption agreement with the City, and fails to cure such default after reasonable notification by the City, then the tax rebate/exemption agreement will be deemed as terminated and the city shall be entitled to recapture up to 100% of all taxes rebated or exempted for that current tax year of failure or default, and the application will be immediately terminated respecting all future years as initially had been approved by the City.

### ***Fiscal Impact:***

The following financial analysis explores the impact of the Enterprise Zone Program based on actual numbers provided by various county and city departments. The analysis demonstrates what a commercial/industrial business designated within an Enterprise Zone could realize in economic development tax incentives developed by the City of Buckhannon under Home Rule.

#### **Commercial/Industrial Business (Under Five Year Enterprise Zone Program)**

##### **Commercial Business A (100% five year rebate and exemption)**

- Total Square Footage - 100,000 Sq. Ft.
- Total Construction/Capital Cost - \$5,500,000

Annual Real and Personal Property (Municipal Tax Collection Only) - \$33,400.01

Five year Real and Personal Property (Municipal Tax Collection Only) - \$167,000.05

Annual Municipal B&O Tax Collection (Based on estimated Gross Income of \$30,000,000) - \$148,213.28

Five year Municipal B&O Tax Collection (Based on estimated Gross Income of \$150,000,000) - \$741,066.40

Annual Total Real and Personal Property Rebate and Municipal B&O Tax credit - \$181,613.29

Five year Total Real and Personal Property Rebate and Municipal B&O Tax credit - \$908,066.45

**Result: Commercial Business A would receive approximately 16.5% in real and personal property rebates (Municipal Tax Collection Only) and Municipal B&O tax credits returned on the initial construction/capital investment over a five year period under the incentive offered in the Enterprise Zone Program.**

##### **Light Industrial Business B (100% five year rebate and exemption)**

- Total Square Footage – 40,000 Sq. Ft.
- Total Construction/Capital Cost - \$3,000,000

Annual Real and Personal Property (Municipal Tax Collection Only) - \$18,561.24

Five year Real and Personal Property (Municipal Tax Collection Only) - \$92,806.20

Annual Municipal B&O Tax Collection (Based on estimated Gross Income of \$15,000,000) - \$74,106.64

Five year Municipal B&O Tax Collection (Based on estimated Gross Income of \$75,000,000) \$370,533.20

Annual Total Real and Personal Property Rebate and Municipal B&O Tax credit - \$92,667.88

Five year Total Real and Personal Property Rebate and Municipal B&O Tax credit - \$463,339.40

**Result: Light Industrial Business B would receive approximately 15.5% in real and personal property rebates (Municipal Tax Collection Only) and Municipal B&O tax credits returned on the initial construction/capital investment over a five year period under the incentive offered in the Enterprise Zone Program.**

*\*Source: City of Buckhannon Treasurer, City of Buckhannon Building Permits, Upshur County Tax Office, RS Means Building Construction Data Costs*

## II. Property Nuisance Abatement and Special Property Tax Lien and “On Site” Citations

***Category of Issue to be Addressed:*** Administration

***Specific state laws, policy rule, or regulation in question:***

- West Virginia Code § 8-12-16(d)
- West Virginia Code § 8-12-16 (e) (1)
- West Virginia Code § 8-16-18

***Specific Problem:***

The City of Buckhannon has been limited in its ability to adequately address several nuisance properties within its corporate limits that have become dilapidated, unkempt or in state of prolonged and consistent disrepair. These blighted properties unfairly decrease the market value of neighboring properties as well as provide for an unsafe and unhealthy environment for the community. Currently, West Virginia municipalities are limited to filing a general lien on a specific property for any cost incurred to repair, alter, improve, vacate/close, remove or demolish any dwelling or building. Frequently, such a property already has a host of senior liens filed against it. The City’s incentive to be aggressive in engaging in property remediation is minimized given the inability to recoup costs with the remediation.

In addition, at the present time there is no clear authority under state law that would permit a municipality’s building and/or zoning enforcement officials to issue “on the site” citations for property nuisance violations. West Virginia Code § 8-12-16 mandates that procedural and proper notification requirements be in accordance with the law concerning service of process of civil actions and on the premise affected by the complaint or order. Specifically, West Virginia Code § 8-12-16(d) indicates that no ordinance shall be adopted without for the right to apply to the circuit court for a temporary injunction which restrains the enforcement official pending final disposition of the cause.

The City believes abandoned and unkempt properties cause decay in the City’s neighborhoods and a decline in the value of neighboring properties while creating unsafe and unhealthy living conditions. These conditions justify strong and aggressive measures by the City to do everything possible to promptly abate such hazards in its neighborhoods. This swelling phenomenon is apparent according to the following article from Realtor Mag (<http://realtormag.realtor.org/daily-news/2013/01/31/bad-neighbors-can-decrease-property-values>) which outlines a survey from the Appraisal Institute (<http://www.appraisalinstitute.org/bad-neighbors-can-reduce-property-values-appraisal-institute-warns/>) See article below:

# Bad Neighbors Can Decrease Property Values

DAILY REAL ESTATE NEWS | THURSDAY, JANUARY 31, 2013

A bad neighbor can bring down the value of a home, possibly by even up to 10 percent, according to the Appraisal Institute.

“I’ve seen many situations where external factors, such as living near a bad neighbor, can lower home values by more than 5 to 10 percent,” says Richard L. Borges II, president of the Appraisal Institute. “Home owners should be aware of what is going on in their neighborhood and how others’ bad behaviors could affect their home’s value.”

What qualifies as a bad neighbor — or “external obsolescence” in appraisal speak? Home owners with “annoying pets, unkempt yards, unpleasant odors, loud music, dangerous trees and limbs, or poorly maintained exteriors,” according to the Appraisal Institute.

The organization recommends home owners take action. For example, banding together with other neighbors to approach the “bad neighbor” together and check if the home is violating any municipality codes or subdivision restrictions that you can report. In some cases it may be worth hiring an attorney. “If all else fails, the cost of an attorney likely will be less than the home’s potential loss in value,” according to the Appraisal Institute.

The existence of unkempt and neglected properties are having long term adverse effect on sustaining community development and neighborhoods within the City of Buckhannon, State of West Virginia and other communities in other states. This increasing problem has been outline in a 2008 report by the United States Conference of Mayors as referenced in the following online link <http://www.usmayors.org/bestpractices/vacantproperties08.pdf>

## ***Specific Solution:***

The present method whereby a municipality realizes only a general lien does not specifically assure that any abated cleanup cost incurred by the City will ever be repaid, and if payment is realized it is often associated with the property being sold, auctioned or refinanced, sometimes years after the City’s cost incurrence. The current model is not conducive to the remediation investment ever being recouped by the City, and certainly not in a timely manner. Clever property owners have contrived ways to exploit the shortcomings of the current statute. In one recent instance, Buckhannon had been attempting to force the owner of a dilapidated, commercial building situated in a residentially zoned area, to raze the structure. Instead, the owner deeded the property to another party who the City suspected was not really a bona fide purchaser. The former owner took a purchase money deed of trust on the property, i.e., a first lien, essentially assuring that if the building was subsequently razed by the City, the purchase

money deed of trust would be senior to the City's general lien, thus allowing for subsequent foreclosure and reacquisition by the former owner with the City's junior lien being defeated and the nuisance thus being abated at no cost to the former owner.

The City of Buckhannon seeks to expand its power and authority pursuant to West Virginia Code 8-12-16 (e) (1) whereby the City will be able to establish a property tax lien, the amount of which would be assessed together with the annual, property tax assessment against a subject's real property for the amount reflecting all costs incurred by the City during the preceding year for repairing, altering or improving, or for vacating and closing, removing or demolishing any dwelling house or other building, all of these processes sometimes hereinafter referred to as "property remediation." All other Code provisions, and particularly those according due process to the owner within 8-12-16 (e) will continue to be incorporated as part of the enforcement measures respecting the City's expanded power and authority. Other states have adopted such progressive models for expedited, municipal expenditure recoupment of property remediation projects with tremendous success.

The model proposed by Buckhannon will permit property remediation costs to be directly assessed as part of an owner's annual property tax due for payment with the next ensuing year's property tax invoice. The direct cost assessment added to the next year's property tax invoice will allow for actual incurred costs to be recovered by the City much more expediently. The City would utilize the powers established in West Virginia Code 8-16-18 to impose equitable charges for services rendered by works for the improvement and protection of properties based on the cost of labor, equipment and other material resources necessary to abate the property nuisance.

The City further would apply its existing property maintenance ordinances to establish criteria for blighted, dilapidated, unkempt or distressed properties. Furthermore, the City of Buckhannon would have the ability to file such a tax lien for properties having high noxious weeds, grass, vegetation and/or clutter, all of which is proscribed pursuant to existing City ordinances.

The City will accord full due process of the law to subject property owners prior to any nuisance abatement and undertaking of remediation work, including certified mail notification to the owner detailing the nuisance activities, documentation of the property owner's failure to comply, any court or housing enforcement board order to abate nuisance activities, the appeal process, notification of the assessment of cost via certified mail including personnel, equipment and any legal fees associated with the abatement cost, etc.

Buckhannon will assess the entire cost of the City's remediation work upon the affected property as a property tax lien, which assessment shall then constitute a tax lien upon such property favoring the City. The property tax lien upon the property shall be expressly superior to all other liens except the annual property tax itself.

The City Treasurer would compile a report for the Assessor attaching copies of the recorded liens and formally requesting the special tax assessment. It is not anticipated that there would be more than five to ten special assessment requests for property remediation from the City per year. The Assessor's Office already calculates thousands of special assessments annually for matters such as the county-wide school levy and the City library assessment, so these very few special assessments for City property remediation will involve very nominal, additional work for the Assessor. Similarly, upon collection of the special assessment as part of the collection of the regular, annual property tax, the Sheriff's Office also would have nominal,

additional work, simply being required to issue a check to the City for the recouped remediation work.

The City of Buckhannon believes that the special assessment will not unduly burden any other agency, i.e., the Upshur County Assessor and/or Sheriff's offices. Prior to the County Assessor's final preparation of property assessments for the forthcoming fiscal year that begins each July 1, and with a target date of January 31, the City Treasurer would collaborate with the City's Zoning and Housing Enforcement Officer, and the City Street and Waste Superintendent, the Street and Waste Department being charged with property remediation work, to confirm those liens that have been perfected by the City during the preceding year.

In addition to the ability to post a tax lien in regards to municipal nuisance abatement, the City of Buckhannon proposes under Home Rule that building and/or zoning enforcement officials be authorized the power to issue "on site" citations for reoccurring exterior nuisance violations including, but not limited to the following: trash/rubbish, overgrown grass/weeds, junked or otherwise unlawfully situated motor vehicles, broken glass or windows and maintenance of vacant or unkempt structures. These "on site" citations will be represented and administered in the same manner in which traffic citations are issue by the Buckhannon Police Department

***Fiscal Impact:***

The fiscal impact of unkempt or blighted properties has an adverse effect on the municipality, the individual property owners and community/neighborhood development. The City has to deal with health and safety issues related to the property and the individual property owners and neighborhood must also contend with the same issues and the ramifications of the devaluation of their own property investments.

As previously stated in the proposal, according to the Realtor Mag article and Appraisal Institute survey, property values in surrounding homes can decrease in value of up to ten percent and possibly more in other communities. For example, a home appraised at \$200,000 could lose approximately \$20,000 in value just for being located in the same vicinity of an unkempt or blighted property. This loses in value impacts the individual property owner's ability to refinance or sale his or her property without a substantial loss.

### III. Police Civil Service Employment of Part-time Officers and Expanding Applicants' Maximum Age

***Category of Issue to be Addressed:*** Personnel

***Specific state laws, policy rule, or regulation in question:***

- West Virginia Code § 6-3-1a
- West Virginia Code § 7-14-8(5)
- West Virginia Code § 8-14-12
- West Virginia Code § 8-14-16

***Specific Problem:***

Buckhannon recently has experienced a substantial increase in crime primarily due to drug related problems and would greatly benefit from increasing the number of its police officers. This increasing situation is creating “urgent reasons” to justify additional resources (officers) to combat criminal activities within the City of Buckhannon. Budget constraints, however, do not bode well for an increase in fulltime police officers. By expanding the Police Civil Service provisions, the City would be able to hire half-time police officers who are already State Police Academy trained officers from other law enforcement agencies in West Virginia. Additionally, the City could consider half-time retention of senior officers who are retirement eligible, i.e., age 56 or older, and who would be designated for special assignment such as drug investigations.

***Proposed Solution:***

Buckhannon’s City Council adopted an ordinance establishing Police Civil Service on May 6, 1954. The City proposes the hiring of half-time police officers to assist its full-time paid department consisting of a police chief and eight officers. Additionally, the City proposes to increase the maximum age of hire of its full-time officers to 45 years of age.

The proposed Buckhannon model will not affect civil service protection for current or future fulltime paid officers of the City Police Department. Buckhannon will continue to fully adhere to all requirements of the West Virginia Code applicable to Police Civil Service protections. The authorization would expand West Virginia Code § 8-14-16 and provide for half-time certified and trained officers to serve longer than the three month provisional, but not to exceed 1040 hours during a calendar year.

The City would adopt an ordinance under Home Rule allowing half-time certified and trained officers to be hired by the Buckhannon Police Department who would serve a maximum of 1040 hours annually. Furthermore, the proposed Buckhannon model under Home Rule would be limited pursuant to a formula whereby half-time officers could comprise a maximum of 25% of the total approved full-time police officers. To illustrate this formula, the City of Buckhannon currently has nine approved full-time police officers; therefore, the Buckhannon Police Department could only employ two half-time certified and trained police officers at any time. In addition to this specific proposal, Buckhannon’s would authorize the City’s hiring of half-time officers who are under the age of 56 years.

The approved model under Home Rule would permit the City of Buckhannon to increase maximum hiring age limit from 40 years of age to 45. Deputy Sheriffs pursuant to Civil Service under West Virginia Code 7-14-8(5) already are permitted to be 45 at time of hire. During the past three police hiring processes conducted by the Buckhannon Police Department, approximately 30% of the applicants were rejected or failed to apply because of the current 40 year-old maximum age restriction.

Unfortunately, it must be noted that included within that 30% estimate were prospective officers with prior law enforcement experience or individuals with extensive military experience. Class III and Class IV municipalities continue to struggle in their search for qualified applicants regardless of maximum age limitations, but these limitations do have a profound impact on re-advertising and the rejection of highly qualified officers.

There are other provisions of the State Code that would seem to support a model such as that being proposed by Buckhannon. First, Sheriffs' Departments already have the authority to establish a "Sheriff's Reserve" as set forth pursuant to WV Code 6-3-1a. Additionally, pursuant to WV Code 8-14-12, police officers returning to their former department within a two year period, may be older than 40 years of age. Also, 8-14-16 permits three month provisional appointments without any age limitation. There are a number of recognized special needs in our existing State statutes.

***Fiscal Impact:***

A full-time police officer in Buckhannon currently results in an average, annual cost incurrence of \$53,244 which includes base salary, overtime, and benefits. The hiring of two additional, full-time paid officers would cost the City \$106,488 annually exclusive of additional cruiser costs. The hiring of two half-time (20 hours per week), certified and trained officers, i.e., the half-time officers must have completed the State Police Academy training, would result in a combined cost incurrence to the City of \$35,360 annually, or \$17,884 less than one full-time paid officer, and \$71,128.00 less than two full-time paid officers. Upon approval, this model will result in more officers assisting in criminal investigations and lessening the caseload burden within the City of Buckhannon and the Buckhannon Police Department.

#### IV. Online Sale or Disposition of Other Municipal Property

***Category of Issue to be Addressed:*** Administration

***Specific state laws, policy rule, or regulation in question:***

- West Virginia Code Article 3 Chapter 59
- West Virginia Code § 8-12-18 (b)

***Specific Problem:***

The City of Buckhannon's inability to sale or dispose of real and personal property using online methods has limited the City's revenue potential by decreasing the potential bidder audience to only a selected media coverage area. The absence of the City's ability to broaden the coverage area to include the internet to more potential bidder results in the demand for real and personal property for sale by the City to diminish revenue collection for items the City owns such as surplus equipment and real estate property. WV Code § 8-12-18 actually limits the City of Buckhannon from realizing the true highest bidder for surplus equipment and real estate by not specifically addressing and therefore not permitting the use of online auctions as a means of selling or disposing of municipal owned property.

***Proposed Solution:***

The City of Buckhannon under Home Rule proposes to expand its authority and power respecting the sale of municipal property through online sales. Currently, the City of Buckhannon is required to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, but before making any sale, notice of the time, terms and place of sale, together with a brief description of the property to be sold, shall be published as a Class I legal advertisement in compliance with West Virginia Code Article 3, Chapter 59.

Embracing technology that did not exist when the current legislation was drafted, the City of Buckhannon proposes that the sale of real or personal property be advertised but offered for sale utilizing reputable online auction services that specialize in conducting governmental property auctions. The utilization of online auctions as an additional means for the sale and disposition of real and personal property will expand bidder participation in the auction process thus providing potential for the City to realize more revenue than through the current, traditional, auction method.

To further satisfy the requirement of a Class I legal advertisement under West Virginia Code § 8-12-18 (b), the City of Buckhannon would include a website link within the traditional, legal advertisement identifying the selected online website specializing in government auctions and provide potential bidders with the opportunity to be directed to the website for real and personal property information and bidding. Again, the City's intent is to broaden the potential bidder audience and therefore increase revenue potential as it relates to municipal, real and personal property sale or disposition.

**Fiscal Impact:**

The fiscal impact of this proposal can't effectively be measured or calculated because of specific market driven demands for certain surplus equipment or real estate. However, many municipalities in the United State used online auctions to sell or dispose of municipally owned surplus equipment and/or real estate property. The following article from GovDeals.com attempt to quantify the impact of online auctions:

# Surplus equipment sales help cities **s-t-r-e-t-c-h** budgets

By PHOEBE MUTHART  
The Municipal

One strategy for making your department's budget go farther is to put that extra equipment on the market: The trick is figuring out which selling strategy will get you the best price and involves the least amount of hassle.

For Middletown, Ohio, online auctions proved to be the way to go. The town made \$1 million in revenue from the sale of surplus items after it began using the GovDeals Inc. auction site in 2005.

"Prior to that, we were only making less than \$10,000 a year," Cindy Strayer, Middletown's purchasing agent, said. "We were doing an auction every year, but now we sell them as they come in."

Local police cars, as well as confiscated and recovered items have gone up for sale.

Other vehicles, as well as bicycles, have also sold very well, she said.

Beyond the increase in revenue, Strayer found other benefits to using an online auction.

"It's better because we no longer have to carry the items on our inventory or insurance for up to a year waiting for the next auction," she said. "Plus, we get the revenue from the sale right away, and the sale price is much higher because we are attracting bidders from all over the world, as opposed to just in the Middletown area. One successful bidder was from Canada."

Joe Donlon of Standard Equipment in Chicago, Ill., knows that whether you're looking to trade in a used item in order to purchase new equipment or looking to spend less money by buying used or re-built equipment, the process isn't always a piece of cake.

"It's a supply and demand thing. It's not that easy to get it and it can be a pain to get

rid of it."

Strayer said that storing the unneeded items long term created a space problem for Middletown. In the past, a significant amount of time was also invested in getting the items ready for auction, transporting them to the auction site and actually holding the auction. "Now, we send the items to the auction block as soon as they are deemed no longer needed for public purposes," she noted.

The global, online company Vocon Auctions also handles the auctioning of light and heavy municipal equipment in both live and virtual formats.

"An auction is a good way to turn idle, surplus assets into revenue for a municipality," said Jared Modlin, national account manager for VOCON. Modlin's recommendation is to make sure you know exactly what the auction company is offering and who its target audience is prior to doing business with it. ►

## **Conclusion**

In the United States, some states constitutionally or legislatively grant home rule to cities, counties, and municipalities within their borders. These are called "home rule states." Local governments in home rule states are free to pass laws and ordinances as they see fit to further their operations, within the bounds of the state and federal constitutions. In other states, such as West Virginia, local governments have only the authority expressly granted to them by state legislatures, typically in accordance with the legal principle known as Dillon's Rule.

The City of Buckhannon visions the establishment of the West Virginia Home Rule Program as a beneficial component in providing municipalities to in essence chart their own course within the parameters of the federal and state law. The ability of the City of Buckhannon to have the autonomy to implement various policies and ordinances that reflect the demographic and conducive nature of our city and community will only flourish with approval to participate in the program.

**Affidavits**

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**(Affidavits included on next several pages)**