

ORDINANCE NO. 393 OF THE CITY OF BUCKHANNON,
AN ORDINANCE FORMALLY ENACTING THE FIRST PROPOSAL OF THE CITY OF
BUCKHANNON'S HOME RULE PLAN THAT WAS PREVIOUSLY APPROVED BY THE
STATE OF WEST VIRGINIA'S HOME RULE BOARD, SPECIFICALLY PROVIDING
FOR THE ESTABLISHMENT OF (1) ENTERPRISE ZONES AND (2) THE MUNICIPAL
REAL AND PERSONAL PROPERTY TAX REBATES, AND BUSINESS AND
OCCUPATION TAX EXEMPTIONS FOR QUALIFYING, NEW AND EXISTING
COMPANIES THAT INVEST CAPITAL AND CREATE JOBS WITHIN THE
CORPORATE LIMITS OF BUCKHANNON

WHEREAS, Article VI, Section 39(a) of the Constitution of West Virginia, which Section 39(a) was ratified on November 3, 1936, captioned "Home Rule for Municipalities," specifically provides that a municipality "through its legally constituted authority, may pass all laws and ordinances relating to its municipal affairs: Provided, that any such charter or amendment thereto, and any such law or ordinance so adopted, shall be invalid and void if inconsistent or in conflict with this Constitution or the general laws of the State then in effect, or thereafter, from time to time enacted"; and,

WHEREAS, in 2007, the West Virginia legislature enacted the Municipal Home Rule Pilot Program embodied by the statutory provisions of Chapter 8, Article 1, Section 5a of the West Virginia Code; and,

WHEREAS, effective July 1, 2013, the West Virginia legislature amended the Municipal Home Rule Pilot Program to expand the Program to authorize as many as 20 municipalities to participate in the expanded pilot program until July 1, 2019; and,

WHEREAS, Chapter 8, Article 1, Section 5a, paragraph (f) of the West Virginia Code, as amended, previously provided that "[o]n or before June 1, 2014, a ... municipality desiring to participate in the Municipal Home Rule Pilot Program shall submit a written plan to the [Municipal Home Rule] board"; and,

WHEREAS, Chapter 8, Article 1, Section 5a, paragraph (g) of the West Virginia Code specifically provides that "[p]rior to submitting its written plan to the board, the municipality shall: (1) Hold a public hearing on the written plan; (2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement; (3) Make a copy of the written plan available for public inspection at least thirty days prior to the public hearing; and (4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed ordinance has been read two times."; and,

WHEREAS, the Council of the City of Buckhannon previously authorized the preparation of a written Home Rule Plan for the City of Buckhannon, a copy of which

plan was appended to Ordinance No. 380 that was passed and adopted by the Council on May 22, 2014 and further which plan is expressly made a part of this authorizing Ordinance; and,

WHEREAS, the City of Buckhannon thereafter fully complied with all statutory provisions of Chapter 8, Article 1, Section 5a, paragraph (g) of the West Virginia Code; and,

WHEREAS, on October 6, 2014, the City of Buckhannon was notified that its Home Rule application was approved in all respects by the State of West Virginia's Municipal Home Rule Board; and,

WHEREAS, the Legislature of the State of West Virginia during its regular 2015 session thereafter amended the statutory provisions of Chapter 8-1-5a et seq. of the West Virginia Code, removing all previous requirements that the State's Municipal Home Rule Board must approve each Home Rule Plan ordinance prior to enactment, and otherwise amending the process for enacting Home Rule ordinances in general, all effective June 12, 2015; and,

WHEREAS, the first "proposal" of the City of Buckhannon's previously approved Home Rule Plan concerned the establishment of municipal real and personal property tax rebates, and business and occupation tax exemptions for qualifying, new and existing companies that invest capital and create jobs within the corporate limits; and,

WHEREAS, the Council of the City of Buckhannon now desires to specifically and formally adopt the first "proposal" of the City's Home Rule Plan as was previously approved by the State of West Virginia's Municipal Home Rule Board.

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

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ARTICLE I - FINDINGS: The Council of the City of Buckhannon hereby makes the following findings:

(A) The City of Buckhannon was formally designated by the State of West Virginia's Municipal Home Rule Board as a "Home Rule" municipality on October 6, 2014;

(B) The first proposal of the City of Buckhannon's Home Rule plan concerned the establishment of municipal real and personal property tax rebates, and business and

occupation tax exemptions for qualifying, new and existing companies that invest capital and create jobs within the corporate limits;

(C) The City of Buckhannon as a “Home Rule” municipality remains committed to complying with all statutory provisions of the Municipal Home Rule Pilot Program Act.

(D) The City of Buckhannon understands that pursuant to the amendments to the Act as effectuated by the Legislature of the State of West Virginia that became effective on June 12, 2015, and specifically pursuant to Chapter 8, Article 1, Section 5a.(i) of the West Virginia Code that the City of Buckhannon shall not at any time pass or enact any ordinance, act, resolution, rule or regulation pursuant to the Home Rule Act that is contrary to any of the following:

- (1) environmental law;
- (2) bidding on government construction and other contracts;
- (3) the Freedom of Information Act;
- (4) the Open Governmental Proceedings Act;
- (5) wages for construction of public improvements;
- (6) the provisions of Chapter 8, Article 1, Section 5a of the West Virginia Code, as amended;
- (7) the provisions of Chapter 8, Article 12, Section 5a of the West Virginia Code, as amended;
- (8) the City of Buckhannon’s written Home Rule plan;
- (9) the Constitutions of either the United States or the State of West Virginia
- (10) federal law or crimes and punishment
- (11) Chapters 60A, 61, and 62 of the West Virginia Code or state crimes and punishment;
- (12) laws governing pensions or retirement plans;
- (13) laws governing annexation;
- (14) laws governing taxation;
- (15) laws governing tax increment financing;
- (16) laws governing extraction of natural resources;
- (17) marriage and divorce laws

(E) 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.

(F) 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.

(G) 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.

(H) 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-[^]-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.

(I) 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.

(J) 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).

(K) 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 existing tax incentives for business to locate or expand in Buckhannon.

(L) 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.

(M) 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.

(N) 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 (5) 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.

ARTICLE II – ADMINISTRATIVE PROVISIONS:

(A) MINIMUM QUALIFYING REQUIREMENTS:

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

(a) increase the combined value of their real and tax assessable personal property by at least One Million Dollars (\$1,000,000) upon completion; or

(b) result in a capital investment including construction of at least One Million Dollars (\$1,000,000) upon completion; and-

(c) increase the number of full-time jobs by five (5) or more employees. For purposes of application of this Ordinance, "fulltime" employment means employees working at least thirty-two (32) hours per week for fifty (50) weeks per year, i.e., 1,600 hours per year.

(B) REBATE & EXEMPTION FORMULA:

(1) Any commercial or industrial business either new or relocating or expanding their existing business shall be eligible for municipal real and personal property rebates. Only new or relocating commercial or industrial business shall be eligible for the business and occupation tax exemptions contained within this Article. Relocations shall include any commercial or industrial business annexing into the corporate limits of the City of Buckhannon.

(2) If the total capital investment is \$1,000,000 (minimum) the percentage of property tax rebate and B&O tax exemption shall be 50 % and shall be authorized for a period of two (2) years.

(3) If the total capital investment is \$1,000,001 to \$2,500,000 the percentage of property tax rebate and B&O tax exemption shall be 100% and shall be authorized for a period of three (3) years.

(4) If the total capital investment is \$2,500,001 to \$5,000,000 the percentage of property tax rebate and B&O tax exemption shall be 100% and shall be authorized for a period of four (4) years.

(5) If the total capital investment is \$5,000,001 or greater the percentage of property tax rebate and B&O credit shall be 100% and shall be authorized for the maximum period of five (5) years.

(6) If an existing commercial or industrial business is expanding their operations, the total new, capital investment shall be a minimum of \$1,500,000 and the percentage of tax rebate and B&O tax exemption shall be 100% for a period of two (2) years. Municipal real and personal property rebates shall only be considered for the expansion portion of the commercial or industrial business.

(7) An annual extended rebate and tax exemption of up to 100% for an additional two (2) years may 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. The business will continue its percentage rate with an extension not to exceed an additional two (2) years.

(8) In order to qualify and maintain the tax rebate and credit under the designated Enterprise Zone, the business shall employ and maintain a payroll equal to a minimum of 20% of the total capital investment of the business. During the duration of the tax incentives, the business shall be required to report quarterly their full-time payroll totals and additionally shall file an annual Business and Occupation Tax return with the City indicating their annual gross income. Commercial or industrial businesses expanding shall not have to report their full-time payroll to the City of Buckhannon.

(9) 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.

(10) The City strongly encourages applications committing to 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.

(11) The City strongly encourages applications committing to 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;

(12) 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.

C. APPLICATION PROCEDURE:

(1) All applications shall be filed with the City Council, and made a part of the record thereof during a regularly convened City Council meeting;

(2) Applications shall be filed within sixty (60) days of either, the obtainment of a municipal business license; the obtainment of a state business license or, the issuance by the City of Buckhannon of a certificate of occupancy, whichever shall last occur.

(3) The Council shall immediately acknowledge all application filings and refer all applications to the City Administrator for review and investigation;

(4) The City Administrator shall promptly review the application and fully investigate the matter, and shall report in writing to the City Council within sixty (60) days, as to the application's approval or failure to meet the City's requirements as set forth herein, and the City Council shall then accept and adopt the City Administrator's approval or non-approval of the application, as the case may be.

ARTICLE III – ADOPTION OF REASONABLE AND APPROPRIATE ADMINISTRATIVE RULES AND REGULATIONS BY CITY ADMINISTRATOR:

The City Administrator may establish such additional reasonable and appropriate, administrative rules, regulations, and forms for the administration of this ordinance that are not inconsistent with the provisions of this Ordinance. Any such administrative rules, regulations, and forms shall be reduced to written form and filed with the Buckhannon City Council during a regularly convened City Council meeting prior to any such administrative rules, regulations, and forms' implementation.

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 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 second (2nd) reading, passage and adoption by the Council of the City of Buckhannon, i.e., August 16, 2015.

FIRST READING:

July 2, 2015

SECOND READING, PASSAGE & ADOPTION:

July 16, 2015

Richard W. Edwards, Mayor

CERTIFICATE OF ENACTMENT

I, Amberle Jenkins, Assistant City Recorder, do hereby certify that the foregoing Ordinance No. 393 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular session of the said Council assembled on July 16, 2015.

Amberle Jenkins, Assistant City Recorder