

ORDINANCE NO. 193 OF THE CITY OF BUCKHANNON, A GENERAL ORDINANCE RELATING TO THE CONSTRUCTION, MAINTENANCE AND USE OF PUBLIC STREETS AND DRAINAGE FACILITIES IN THE CITY OF BUCKHANNON, AND ESTABLISHING OFFENSES AND PENALTIES FOR VIOLATION.

ARTICLE 1, GENERAL PROVISIONS

SECTION 1-1: (a) All maintenance and repair of public streets, curbs, alleys, sidewalks, and other public ways in the City shall be under the supervision of the Public Works Superintendent, who shall be charged with the duty of ascertaining and reporting to the Mayor and Council any violations of the Ordinances relating to the streets, curbs, alleys, sidewalks, and other public ways;

(b) All new construction of public streets, curbs, alleys, sidewalks, and other public ways in the City shall be under the supervision of the City Engineer;

© All construction, maintenance, and repair of surface water drainage facilities in the City shall be under the supervision of the Public Works Superintendent.

ARTICLE 2- SURFACE WATER DRAINAGE FACILITIES

SECTION 2-1: It shall be unlawful for any person, corporation, or firm to disturb, close, fill, obstruct, or in any way interfere with the free flow of any surface or rain water drain, ditch, stream, water course, or drainage facility, man made or natural, which is located in any public street, alley, or public place, or which is used for the purpose of draining public streets, alleys, or other public places, or which is used for providing surface or rain water drainage for any areas, private residences, or buildings if the City, without first obtaining a permit therefore.

SECTION 2-2: It shall be unlawful for any person, corporation, or firm to establish or construct any subdivision without first providing for adequate means of disposing of surface waters and rain waters in and from the subdivision area and without first obtaining a permit for the proposed drainage facilities. For the purpose of this article any lot or area on which two or more residences are to be, or may be, constructed shall be considered a residential subdivision.

SECTION 2-3: It shall be unlawful for any person, corporation, or firm to construct a dwelling house, or any building of any kind or nature, without first providing for an adequate means of disposing surface and rain waters which are to be collected from roof or other drains or from the lot on which the same are to be constructed and without first obtaining a permit for the proposed drainage facilities.

SECTION 2-4: It shall be unlawful for any person, corporation, or firm to construct any drain, ditch, water course, or other instrument for carrying of rain or surface waters in the City, or to introduce waters from such facilities or from any spring or stream or water course into any public street, sidewalk, alley, or public place or into any natural water course or any man made or natural drainage facility in the City without first obtaining a permit therefore.

SECTION 2-5: It shall be unlawful for any person, corporation, or firm to connect any roof drain, surface water drain, or any drain from any lot or parcel of land, or any house or building, into any sanitary sewer, whether privately or publicly owned, or to maintain any existing drain for surface or rain water into any sanitary sewer or to introduce, permit or allow to be introduced any surface or rain water into any sanitary sewer.

SECTION 2-6: Applications for permits for construction or closing of drainage ditches facilities, as provided in Sections 2-1, 2-2, 2-3, and 2-4 of this article, shall be submitted in writing to the Recorder and approved by the Council and shall contain detailed plans and specifications or a detailed statement of the purpose drainage facilities. All applications shall be made prior to the commencement of the construction of any subdivision, residence, or building and prior to the construction or closing of the drainage facility for which approval is desired. The Council, at its option may require the applicant to furnish plans for the drainage facility which are certified by a registered engineer as being sufficient for the purpose of draining the area involved.

ARTICLE 3 - DRIVEWAYS

SECTION 3-1: It shall be unlawful for any person, corporation or firm to construct, build, establish or maintain any driveway over, across, or upon any portion of any public sidewalk or within any public road right of way or to connect the same into any public street without first having obtained the approval of the Council of the City of Buckhannon.

SECTION 3-2: Application for driveway approval shall be made in writing upon forms furnished by the City. In the event that it is not necessary to cut into or excavate any curb, sidewalk or street for the driveway, the Recorder of the City of Buckhannon shall have the authority to grant approval for driveways; otherwise, all driveway approvals shall be granted by the Council only. The Council, at its option, may require the applicant to provide plans and specifications for any driveway which requires the cutting or excavations into of any curb, sidewalk or street.

SECTION 3-3: (a) It shall be the responsibility of the owner of the property upon which the driveway is being constructed to repair and replace any damage done to any public street or sidewalk in the construction of any driveway and such work shall be accomplished under the supervision of the Public Works Superintendent or City Engineer. If any property owner fails to repair or replace any damaged sidewalk or street and remains in default for five (5) days after receipt of written notice from the City calling attention to his default, then the City may repair and replace the damaged sidewalk or street and charge the costs to the property owner;

(b) All driveways shall be so graded between the gutter and the sidewalk so that it will not be necessary to change the established grade of either sidewalk or gutters;

(c) No part of any driveway shall be constructed so as to extend beyond the curb line in such a manner so as to ramp over or change the grade of the gutter or to obstruct the free flow of water in the gutter;

(d) Where driveways cross open ditches or water courses in the street right of way, culverts shall be installed to carry the water under the driveway. The size and construction of all culverts installed in ditches or water courses within public street rights of way shall be approved by the Council of the City of Buckhannon.

SECTION 3-4: No fee shall be charged by the City in connection with the issuance of permits for driveways not involving cuts or excavations into curbs, sidewalks or streets, or construction of culverts. A fee of \$10.00 shall be charged for the issuance of each permit for a driveway involving cuts or excavations into curbs, sidewalks or streets, or construction of culverts.

ARTICLE 4 - OVERHANGING SIGNS AND CANOPIES

SECTION 4-1: No person, firm or corporation shall erect or maintain any sign, signboard or canopy over any street, curb, sidewalk, alley or other public way in the City without having first obtained an annual permit therefore as herein provided. Permits for signs, canopies or signboards shall be issued by the Recorder, subject to approval of the Council, upon payment of the annual fee provided, and shall designate the character and location of the proposed structure.

SECTION 4-2: The annual fee for such permits shall be \$5.50 for each overhanging sign or canopy.

SECTION 4-3: All signs and canopies extending over any public sidewalk, street, alley or other public place must be securely fastened and constructed so that there will be no danger of the same being dislodged by winds or falling from other causes. No sign or canopy shall be erected or maintained extending over any public street, curb, sidewalk, alley or any public place in such a location as to obstruct the view of any traffic light or other traffic sign or signal or the view of motorists or pedestrians on public streets or sidewalks.

SECTION 4-4: The lowest part of any such canopy or sign, or of any nonrigid awning or any support thereof, which extend over any public way shall be at least 7½ feet above the level of the walk or public way over which it extends; but no such canopy, signs, or awnings shall be maintained over any public way used by vehicles if any part of said canopy,

sign or awning is less than fifteen feet above the level of such public way.

SECTION 4-5: It shall be the duty of the Public Works Superintendent to inspect or cause to be inspected every sign, canopy or awning which extends over any sidewalk, curb, street, alley or other public way periodically. If any such sign, awning or canopy is found to be insecurely fastened or if any such sign, awning or canopy is found to obstruct the view of any motorists or pedestrians of approaching traffic or of any traffic light or any traffic sign or signal, he shall report this situation to the owner of the sign or to the owner or occupant of the premises on which it is fastened. If the condition of the sign or canopy is not corrected to comply with the provisions of this Ordinance within three days after such notice, then it may be removed by the City on order of the Council.

SECTION 4-6: All permits for signs or canopies shall be issued subject to the provisions of this ordinance and subject to the signs or canopies being maintained in such a manner so as to comply with the terms of this ordinance and it shall be unlawful for any person, corporation or firm to maintain any sign or canopy in such a manner which is not in compliance with this ordinance or in such a condition so as to be of danger to any person or object in or on any public street, sidewalk or public place.

SECTION 4-7: Nothing contained herein shall be so construed so as to place any liability upon the City or any employee of the City for damages or injuries which may be caused through or by any sign or canopy falling into any public street, curb, alley, sidewalk or public place.

ARTICLE 5 - STREET EXCAVATIONS

SECTION 5-1: It shall be unlawful for any person, firm or corporation to dig or bore into, tunnel under, or to make any trench, cut, or excavation into any street, curb, alley, sidewalk or other public place in the City, whether paved with permanent surface or not, without first having obtained a permit as is herein required, or without complying with the provisions of this ordinance, or in violation of or in variance from the terms of this ordinance or any permit granted.

SECTION 5-2: Applications for such permits shall be made to the Recorder of the City of Buckhannon and each permit may be granted by the Recorder and shall be reviewable by the Council, or may be granted by the Council. The Council may revoke any permit granted by the Recorder or require the applicant to furnish additional information if the application does not comply with the terms of this ordinance. Each application shall describe the location of the intended excavation or other construction, the purpose thereof, the extent of the excavation or other construction, the name and address of the person, firm or corporation doing the work, the name and address of the person, firm or corporation for whom the work is being done, and each application shall contain a statement upon the part of the applicant that he will comply with all ordinances and laws relating to the work to be done.

SECTION 5-3: (a) No such permit shall be issued unless and until the applicant files with his application a bond, with corporate or other approved surety thereon, in an amount of at least double the estimated costs of the repairs which will be required for the street, curb, alley, sidewalk or other public place involved, but in no event less than \$5,000.00, conditioned to indemnify the City for any loss or damage which might be caused to the City by the failure of the applicant to restore and repair pavement in accordance with the provisions of this ordinance and the terms of the applicant's permit. The Council, at its option, may require the applicant to increase the amount of any bond which it deems insufficient.

(b) In lieu of filing a separate bond with each permit application, any public utility which is franchised by the City of Buckhannon may deposit with the Recorder annually one bond in the sum of Fifty Thousand Dollars (\$50,000.00), conditioned to indemnify the City for any loss, or damage that may result or accrue from failure to restore and repair pavement in connection with permits granted at any time during the period of the bond;

(c) All persons, corporations or firms, including public utilities, obtaining permits for excavations, cutting, digging, boring into, or disturbing any street, curb, sidewalk, alley or public way shall notify the Recorder or the Public Works Superintendent at least twenty-four (24) hours in advance of the commencement of work under any permit and also upon completion of the work under the permit. The Council

of the City of Buckhannon recognizes that certain emergency cases may arise when it would not be practical for public utilities to conform with the requirements of this Ordinance in the making of application for permit for the purpose of causing excavations or construction to be made in City sidewalks, streets, alleys, curbs or public places and/or giving the requisite notice of commencement of work. In the event of a bona fide emergency requiring immediate excavations, any public utility franchise by the City of Buckhannon may, without first making application for permit or giving the requisite notice, make immediate excavations into City streets, curbs, sidewalks, alleys or public places for the purpose of causing repairs to be made to their utility lines providing that said public utilities, within twenty-four (24) hours of the making of such excavations, or as soon as City offices are open in the event that City offices are closed within said twenty-four (24) hours period, make application for permit and provide the bonds or deposits as herein required.

(d) In all cases of applications not involving public utilities franchised by the City, and in cases of applications involving public utilities where deemed necessary by the Recorder or Council, no permits shall be granted until the applicant files an additional bond, with corporate or other approved surety thereon, in the sum of Ten Thousand Dollars (\$10,000.00), or such greater amount as the Recorder or Council may require, conditioned to indemnify the City for any loss liability or damage that may result or accrue from or because of the making, existence or manner of construction or safeguarding any excavation or other construction authorized by the permit.

(e) All excavations into paved streets, alleys, sidewalks, curbs or public places shall be made in accordance with the specifications and requirements as set forth in the "The City of Buckhannon, Upshur County, West Virginia, minimum requirements for pavement cuts," a copy of which is hereto annexed as Annex A and specifically made a part of this Ordinance, and it shall be unlawful to make any excavations or pavement cuts in any way contrary to or at variance with the aforesaid specifications.

(f) Excavations in unpaved streets or public places shall be back filled in accordance with the back fill specifications as set forth upon the aforesaid minimum requirements for pavement cuts, with each trench to be topped by compacted stone as provided in the minimum requirements aforesaid.

(g) Proper bracing shall be maintained to prevent the collapse of adjoining ground.

(h) Prior to making any excavations, the Applicant shall determine the location of all pipes, cables or conduits and the Applicant shall be liable to the owner for repair of any pipes, cables or conduits disturbed or damaged. Notice shall be given to the persons maintaining any such pipes, cables or conduits or to the City Department or Officer charged with the care thereof, which are or may be endangered or affected by the making of any such excavation or construction before such pipes, cables or conduits or to the City Department or Officer charged with the care thereof, which are or may be endangered or affected by the making of any such excavation or construction before such pipes, cables or conduits shall be disturbed.

(i) If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users.

(j) The Applicant shall provide proper barricades around such excavations.

(k) All excavations in streets, alleys, sidewalks, curbs, or public places shall be repaired, in accordance with the provisions of this Ordinance, as soon as is practical. Temporary repairs, pending proper weather conditions for the making of permanent repairs, may be accomplished with the consent and under the directions of the Public Works Superintendent.

(l) All applicants shall provide proper and sufficient warning devices, including lights, and barricades to protect and safeguard persons using the streets, alleys, sidewalks or public ways involved.

SECTION 5-4: The fee for each permit issued shall be \$10.00. Public utilities who are operating in the City of Buckhannon under a franchise granted by the City and who are paying an annual franchise tax to the City may pay the sum of \$100.00 as an annual permit fee for all excavations and constructions into streets and public places during any one calendar year, but shall otherwise be required to make application for permits for each entry into any public street, alley, curb, sidewalk or public place.

SECTION 5-5: The Public Works Superintendent shall from time to time, inspect or cause to be inspected all excavations being made in or under any public street, alley, sidewalk, curb, or other public place in the City to see to the enforcement of the provisions of this Ordinance. It shall be the duty of the Recorder to notify the Public Works Superintendent, Upon the receipt of any application for permit for making of excavations, of the receipt of such permit application; of notice of commencement of work; and upon completion of the repairs and restoration of paving. It shall be the duty of the Public Works Superintendent to file with the Recorder a written report in which he signifies his approval of the repairs and restoration of ground and pavement upon completion of same.

SECTION 5-6: The Recorder shall have authority to approve all permits for excavations, providing that the Applicant complies with the provisions of this ordinance. All permits shall be reviewable by the Council and the Council may revoke any permit which has been granted which is not in compliance with this ordinance or may require furnishing of additional bonds or information by the applicant. In the absence of the Recorder or Public Works Superintendent, either may designate a party to perform their functions under this ordinance.

SECTION 5-7: No bonds which are filed in accordance with the provisions of this ordinance shall be released except upon direction of the Council of the City of Buckhannon and the Council of the City of Buckhannon shall not release any such bonds until it is satisfied that the Applicant has fully complied with all of the provisions of this ordinance and the condition of the bonds.

ARTICLE 6 - MISCELLANEOUS

SECTION 6-1: It shall be unlawful for any person, firm or corporation to use any sidewalk, street, metered parking space or other public place as a place for the display or sale of goods, wares or merchandise of any kind or nature, or to write or to make any sign or advertisement on or in any sidewalk, street or public place without first having obtained the approval of the Council.

SECTION 6-2: It shall be unlawful for any person, firm or corporation to make any public solicitations for money or other items of value on any street, sidewalk or public place without first having obtained the approval of the Council.

SECTION 6-3: It shall be unlawful for any person, corporation or firm to arrange for, or participate in, any parade or public demonstration, including picketing, in any street, sidewalk or public place unless the consent of the Council of the City of Buckhannon is first obtained for such parade or public demonstration.

SECTION 6-4: It shall be unlawful to erect or maintain any building or structure which encroaches upon any public street, curb, sidewalk, alley, or other public place.

SECTION 6-5: It shall be unlawful for any person, corporation or firm to abandon any motor vehicle or other item of personal property on any public street, alley, sidewalk or public place.

SECTION 6-6: It shall be unlawful for any person, corporation or firm to store any motor vehicle in any public street, alley, sidewalk or other public place, or for any person, corporation or firm to park any motor vehicle in any public street, alley, sidewalk or other public place for a period of longer than twenty-four (24) consecutive hours without first having obtained the approval of the Council or of the Police Chief of the City. The Police Chief shall have the authority to cause any motor vehicle parked or stored in violation of this ordinance to be towed to a private storage area and therein stored, at the cost of the owner of the vehicle.

SECTION 6-7: It shall be unlawful to erect any poles or wires within any public street or alley right of way or to erect any sign, banner or advertising of any kind or nature upon, across, in or over any sidewalk, alley, street, street right of way or other public place without first having obtained the approval of the Council. Council may grant blanket approval for erection of poles or wires to public utilities through franchises.

SECTION 6-8: (a) It shall be unlawful to plant any tree or bush or shrubbery in any public street or parkway or other public place without having secured a permit therefore. Applications for such permits shall be made to the Recorder and referred by the Recorder to the Public Works Superintendent for investigation before issuance by the Recorder. All trees, bushes and shrubs so planted shall be subject to the direction, approval and subsequent removal, if determined at any time necessary, by and of the Council.

(b) It shall be unlawful to plant, set out or propagate in any public street any of those species of trees commonly known as soft maple, poplar, willow or catalpa or any variety thereof.

(c) It shall be unlawful to remove or cut down any tree or shrub in any place without having secured a permit therefor. Applications for such permits shall be made to and approved by the Recorder, but shall be reviewable by the Council.

(d) It shall be unlawful to injure any tree or shrub planted or growing in any public place.

(e) It shall be unlawful to attach any sign, advertisement or notice to any tree or shrub in any public place, without the consent of the Recorder or Council.

(f) It shall be unlawful to maintain any tree or shrub adjacent or overhanging any sidewalk, alley, street or other public place in the City in such a manner so as to interfere or obstruct travel or traffic. The owner of all such trees or shrubs shall trim or remove the same in order to prevent them from becoming traffic hazards. In the event that the owner fails to trim or remove such trees or shrubs within three (3) days of being notified by the City of the necessity to trim or remove said trees or shrubs, then the City may cause said trees or shrubs to be trimmed or removed at the expense of the owner of said trees or shrubs.

SECTION 6-9: It shall be unlawful for any person, firm or corporation to maintain poles and wires in streets, sidewalks, alleys or other public places in the City, without the consent of the Council; or to permit such poles and wires to be in such a condition so as to constitute a hazard to persons or objects upon the streets, alleys, sidewalks or public places.

SECTION 6-10: (a) It shall be unlawful to deposit on any street or sidewalk any material which may be harmful to the pavement thereof, or waste material, or any glass or other articles which may do injury or damage to any person, animal, vehicle or property in or on the street or sidewalk;

(b) It shall be unlawful to burn leaves or any paper or other waste materials or any items of any kind whatsoever upon any street or sidewalk;

(c) It shall be unlawful for any person to obstruct or block any street or sidewalk or to cause any items to be placed upon any street or sidewalk in such a manner so as to obstruct the same or to interfere with the normal passage of traffic on the same. Merchandise or other articles may be deposited on the sidewalk preparatory to delivery, providing that the usual width of the sidewalk is not to be reduced to less than three (3) feet and provided that no such article is to remain on such sidewalk for more than one-half (1/2) hours. Sidewalk sales by merchants may be authorized by the Council.

SECTION 6-11: It shall be unlawful for any person, firm or corporation repairing or constructing any pavement, sidewalk, or building to block or obstruct any sidewalk and street in connection with the same without first obtaining the consent of the Recorder or

Council and without providing suitable barricades to prevent injuries and without providing temporary sidewalks which shall be safe for travel and convenient for users. It shall be unlawful for any such person, firm or corporation to fail to provide a warning light for such barricades at night and to fail to provide suitable signs warning of such barricades in the day time.

SECTION 6-12: It shall be unlawful for any person, corporation or firm to disturb or interfere with or damage or destroy any warning lights or signs which are erected and placed to protect or mark any excavation or opening for any pavement in any public street, alley, sidewalk or other public place, or to remove, disturb, steal, damage, distroy or interfere with any street sign or traffic sign.

ARTICLE 7 - ABUTTING PROPERTY OWNERS

SECTION 7-1: It shall be the duty and responsibility of all owners of real estate to:

- (a) Maintain in good repair all sidewalks abutting or adjoining their premises, including curbs.
- (b) Maintain so as not to be a hazard to persons using sidewalks or streets or alleys abutting their premises, all trees, shrubs or other plantings.
- (c) Remove and clear all snow or ice which accumulates on sidewalks abutting or adjoining their premises.
- (d) Pay their proportionate share of the costs of paving and/or repaving all sidewalks, streets or alleys, including curbs and gutters, abutting on their premises in accordance with the applicable provision of the laws of the State of West Virginia provided, however, that property owners abutting upon streets or alleys within the road system of the Department of Highways of the State of West Virginia, shall not be liable for payment of any costs of pavement or repavement which would be the responsibility of the Department of Highways and State of West Virginia.

ARTICLE 8 - PENALTIES

SECTION 8-1: (a) It shall be unlawful for any person, corporation or firm to violate any provision of this ordinance. Any person, corporation or firm violating any provision of this ordinance shall be fined no less than \$25.00 nor more than \$200.00 and, in addition thereto, may be sentenced to confinement for a period of not more than thirty (30) days;

(b) Any violation of this ordinance may be enjoined by injunction proceeding instituted in the Circuit Court of Upshur County, West Virginia;

(c) No building, wiring or zoning permit shall be issued to any person, corporation or firm until they comply in full with the provisions of this ordinance. In the event that any person, corporation or firm violates any provision of this ordinance, then no further building, wiring or zoning permits in connection with applications for the subject property or other properties shall be granted until the prior violations are corrected.

ARTICLE 9 - SEVERABILITY

SECTION 9-1: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

ARTICLE 10 - ORDINANCE REPEALED

SECTION 10-1: All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

FIRST READING: April 16, 1981
SECOND READING: December 17, 1981
THIRD READING: January 7, 1982
ENACTED: January 7, 1982

I hereby certify that this is a true copy of an ordinance adopted by the Council of the City of Buckhannon at its regular meeting held on January 7, 1982.

Given under my hand and the seal of the City this 7th day of January, 1982.

Elizabeth J. Poundstone
CITY RECORDER