

ORDINANCE NO. 2016-004 OF THE CITY OF BUCKHANNON, AN ORDINANCE AMENDING, MODIFYING AND RE-ENACTING ARTICLE 1711 OF THE CODIFIED ORDINANCES OF THE CITY OF BUCKHANNON RELATED TO (1) PROPERTY NUISANCE ABATEMENT, (2) CREATION OF A SPECIAL PROPERTY TAX LIEN, AND (3) THE ISSUANCE OF "ON-SITE" CITATIONS

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 second "plank" of the City of Buckhannon's previously approved Home Rule Plan concerned "Property Nuisance Abatement, Special Property Tax Lien, and the issuance of "On Site" Citations"; and,

WHEREAS, the Council of the City of Buckhannon now desires to specifically and formally adopt the second "plank" 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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1711.01 - 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 second "plank" of the City of Buckhannon's Home Rule plan concerned "Property Nuisance Abatement, Special Property Tax Lien, and the issuance of 'On Site' Citations";

(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 to become effective 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 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.

(F) These blighted properties unfairly decrease the market value of neighboring properties as well as provide for an unsafe and unhealthy environment for the community.

(G) 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.

(H) Problematic properties often already have a host of senior liens filed against them.

(G) The City's incentive to be aggressive in engaging in property remediation is minimized given the inability to recoup costs associated with the remediation.

(H) Additionally, there currently 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.

(I) 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 premises affected by the complaint or order.

(J) Specifically, West Virginia Code § 8-12-16(d) indicates that no ordinance shall be adopted without the right to apply to the circuit court for a temporary injunction which restrains the enforcement official pending final disposition of the case.

(K) 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.

(L) These conditions justify strong and aggressive measures by the City to do everything possible to promptly abate such hazards in its neighborhoods.

(M) 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 state statute.

(N) 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 property owner'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.

(O) 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 ensuing 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.

(P) 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.

(Q) 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 process for contesting, notification of the assessment of cost via certified mail including personnel, equipment, and any legal fees associated with the abatement cost, etc.

(R) 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.

(S) The City Treasurer annually would compile a report for the County 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.

(T) The City of Buckhannon believes that the special assessment will not unduly burden any other governmental agency, i.e., the Upshur County Assessor nor 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.

(U) In addition to the ability to post a tax lien respecting municipal nuisance abatement, the City of Buckhannon proposed pursuant to its Home Rule plan that building and/or zoning enforcement officials together with municipal police officers working in cooperation with building and/or zoning enforcement officials, be empowered to issue "on site" citations for recurring 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 issued by the Buckhannon Police Department.

(V) 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.

(W) Property values in surrounding homes can decrease in value of up to ten percent (10%) and possibly more in many neighborhoods. 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 individual property owners' ability to refinance or sell their property without a substantial loss.

1711.02 – ADMINISTRATIVE PROVISIONS:

(A) The purpose of this Article is to provide additional and alternative methods and processes to enforce City ordinances addressing zoning, housing enforcement, sanitation, and common nuisances related to real estate situated within the City of Buckhannon in a fair, speedy, and inexpensive manner, and to improve compliance with such provisions. This Article shall be in addition to those methods and processes otherwise contained in other ordinances of the City of Buckhannon, West Virginia, and shall be applied in the discretion of the enforcement official enforcing the provisions of this Article.

(B) This Article shall apply to and supplement any and all of the zoning, housing enforcement, sanitation, and common nuisance violations referenced in any City ordinance, including but not limited to the following Ordinances of the City of Buckhannon:

- (1) Ordinance No. 244 (Zoning Ordinance);
- (2) Ordinance No. 357 (Abandoned & Junk Car Ordinance);
- (3) Ordinance No. 367 (Housing Enforcement Ordinance); and,
- (4) Ordinance No. 375 (Junk Storage Ordinance).

(C) Any municipal law enforcement officer, as well as the City's Zoning & Housing Enforcement Officer, shall have authority to enforce the provisions of this Ordinance and is referred to herein as an "enforcement official."

(D) Upon receipt of information or observation of circumstances that the likelihood of a violation of any provision of any ordinance of the City of Buckhannon respecting sanitation or common nuisance, an enforcement official may investigate the facts and, to the extent permitted by law, make an inspection of the premises.

(E) If any enforcement official determines that an ordinance violation exists and determines to utilize this enforcement section, the enforcement official shall provide written notice of such violation to the person having either ownership or control of any land, building, structure, sign, property, licensed or permitted business or operation which is in violation, and shall order that violation be corrected; provided, that if an enforcement official determines that the violation is a repeat violation, the enforcement official may dispense with this requirement for written notice and immediately issue a citation for the repeat violation. For purposes of this section, a repeat violation is a violation of the same section of the applicable City ordinance that occurred not fewer than ten (10) business days after the prior violation and not more than one year after the prior violation, whether or not the prior violation was timely corrected or a citation was issued.

(F) Notice of the violation shall be given by personal or substituted service of process in accordance with the West Virginia Rules of Civil Procedure, by either delivering the notice to the person in violation personally to a member of that person's immediate family who is above the age of 16 years and by advising that person of the purpose of the notice. Return of service shall be made at the time of service by the process server effecting service. If personal or substituted service cannot be effectuated or is impractical, the enforcement official may send the notice to the person by certified mail, return receipt requested, to the person's last known address.

(G) Any notice of violation(s) under this section shall be in writing containing the following information:

- (1) the date the notice of violation(s) is given;
- (2) the name and address of the person(s) charged with the violation(s);
- (3) the section of the ordinance(s) violated;
- (4) the nature of the violation;
- (5) a statement of the action required to be taken in order to correct the violation;
- (6) the time period allowed for the violation to be corrected. The time period allowed shall take into consideration the threat posed by the violation to the health, safety, and welfare of the public and the nature and extent of the work required to correct the violation:

provided, that no such time period for correction shall be less than five business days;

(7) the maximum fines that may be assessed if the violation is not corrected; and,

(8) the name, address, and telephone number of the enforcement official issuing the notice of violation.

(H) If the violation has not been corrected within the period established in the notice of violation, or if the violation is a repeat violation for which the notice requirement does not apply, the enforcement official may issue a citation to the violator. The citation shall be in writing and shall contain the following information:

(1) the date of issuance of the citation;

(2) the name and address of the person(s) charged with the violation(s);

(3) the section of the ordinance(s) violated;

(4) If it is a repeat violation, the date the citation was issued within the previous one-year period for a violation of the same section;

(5) the nature of the violation;

(6) the place and time the violation occurred;

(7) if it is not a repeat violation, the date the notice of violation was given;

(8) the amount of the fine imposed for the violation;

(9) the name, address, and telephone number of the enforcement official issuing the citation;

(10) the name, address, and telephone number of the office where the fine must be paid;

(11) a notice that the fine must be paid within ten (10) business days of the service of the citation, together with a warning that the failure to pay when due any fine results in the increase of such a fine by \$100; and,

(12) the name, address, and telephone number of the municipal court where citations may be contested.

(I) A citation shall be served in the same manner as a notice of violation may be served pursuant to this section.

(J) Any person issued a citation pursuant to this section may be punished by a fine as follows: within any one-year period, \$100 for the first citation, \$300 for the second citation, and \$500 for the third citation and each citation thereafter.

(K) All fines imposed by citations under this section shall be due to the municipal court and paid in full within ten (10) business days of the service of the citation unless a hearing before the municipal court is requested. The failure to pay when due any fine imposed under this section shall constitute a failure to appear or otherwise respond under West Virginia Code 8-10-2b and may result in the issuance of a warrant and notification to the West Virginia Division of Motor Vehicles. The failure to pay when due any fine imposed under this section shall increase such a fine by \$100.

(L) Any person contesting such citation may, within ten (10) business days of service of such citation, may request a hearing on the citation, with the municipal court clerk or municipal court clerk deputy in accordance with the following:

(1) Upon requesting a hearing with a municipal court clerk, the clerk or their deputy shall place the case on the municipal court docket, set the case for hearing within thirty (30) days from the date of the request for hearing, provide a notice of hearing to the recipient of the citation, and forward a copy of the notice of hearing to both the enforcement official who issued the citation and the City Attorney. Upon receipt of the Notice of Hearing, the enforcement official shall cause a copy of the citation to be forwarded to the City Attorney and the municipal court clerk who shall file it as the original complaint alleging the violation(s) indicated therein.

(2) The municipal court shall treat the citation itself as the original complaint before the court. Anyone found guilty of the charges contained in the citation shall be fined in accordance with the fines outlined above. If the court finds in favor of the recipient of the citation, the charges shall be dismissed.

1711.03 - 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.

1711.04 - 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., .

FIRST READING:

June 16, 2016

SECOND READING, PASSAGE & ADOPTION:

July 7, 2016

David McCauley, Mayor

CERTIFICATE OF ENACTMENT

I, Richard Edward- City Recorder, do hereby certify that the foregoing Ordinance No. 2016-004 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular session of the said Council assembled on July 7, 2016.

Richard W Edwards – City Recorder