

ORDINANCE NO. 375 OF THE CITY OF BUCKHANNON, AN ORDINANCE:

(1) PROHIBITING THE STORAGE, COLLECTION, PARKING, LEAVING, DEPOSITING, MAINTAINING, RESERVING, PUTTING ASIDE FOR FUTURE USE, PERMITTING, OR ALLOWING TO REMAIN ON ANY PORCH, BALCONY, ROOF, PATIO OR YARD, OTHER THAN IN A COMPLETELY ENCLOSED BUILDING OR STRUCTURE, CERTAIN MATERIALS INCLUDING BUT NOT LIMITED TO JUNK, RUBBISH, CLUTTER, LITTER, DEBRIS, LUMBER, AND BUILDING MATERIALS, AND UPHOLSTERED FURNITURE, MATTRESSES, MATERIALS AND OTHER SIMILAR PRODUCTS NOT NORMALLY INTENDED, DESIGNED, BUILT OR MANUFACTURED FOR OUTSIDE USE WITHIN OR UPON ANY PROPERTY SITUATED WITHIN ANY RESIDENTIALLY ZONED DISTRICT WITHIN THE CORPORATE LIMITS OF THE CITY OF BUCKHANNON; AND (2) ESTABLISHING PENALTIES FOR PERSONS VIOLATING THE PROVISIONS OF THIS ORDINANCE

WHEREAS, the Council of the City of Buckhannon historically has been progressive and proactive in promoting the general health, safety, welfare, and positive appearance and aesthetic appeal of the Buckhannon community through enactment of several ordinances including but not limited to Buckhannon's comprehensive zoning, housing enforcement, and abandoned and junked car ordinances; and,

WHEREAS, notwithstanding the City's efforts, certain residential, property owners have continued to engage in activities and conduct that the Council determines to be detrimental and obstructive to the general health, safety, welfare, and positive appearance and aesthetic appeal of their neighborhoods, and further depreciating the value of surrounding properties; and,

WHEREAS, those activities and conduct that the City Council deems to be detrimental and obstructive to the general health, safety, welfare, and positive appearance and aesthetic appeal of residential neighborhoods, and further depreciative of the value of property include- the storage, collection, parking, leaving, depositing, maintaining, reserving, putting aside for future use, permitting, or allowing to remain on any porch, balcony, roof, patio or yard, other than in a completely enclosed building or structure certain materials including but not limited to junk, rubbish, clutter, litter, debris, lumber and other building materials, and further upholstered furniture, mattresses, materials and other similar products not normally intended, designed, built or manufactured for outside use; and,

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

WHEREAS, Chapter 8, Article 12, Section 5, Subsection (15) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to make regulations guarding against danger or damage by fire; and,

WHEREAS, Chapter 8, Article 12, Section 5, Subsection (23) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing

body to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance; and,

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

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

WHEREAS, Chapter 8, Article 11, Section 3, Subsection (3), of the West Virginia Code, as amended, specifically provides that any matter relating to the establishment of offenses and penalties by a municipality shall be set forth by ordinance; and,

WHEREAS, the Council of the City of Buckhannon desires in all respects to fully comply with the statutes of the State of West Virginia insofar as the establishment of the provisions of this Ordinance are concerned.

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

ARTICLE I – TITLE OF ORDINANCE: This Ordinance shall be known as the City of Buckhannon's Junk Storage Ordinance.

ARTICLE II - FINDINGS OF COUNCIL: The Council of the City of Buckhannon hereby makes the following findings:

(A) The maintenance of a clean, wholesome and attractive environment, particularly in the City of Buckhannon's residential areas is of vital importance to the:

- (1) continued, general health, safety, and welfare of Buckhannon's citizens;
- (2) positive and progressive growth of the community; and,
- (3) maximizing real property values.

(B) The Council of the City of Buckhannon historically has been attentive to the positive appearance of the Buckhannon community as evidenced by the enactment of several ordinances addressing comprehensive zoning, housing enforcement, and abandoned and junked cars.

(C) The regulation of the outdoor storage of junk, rubbish, clutter, litter or debris, regardless of quantity, is reasonable and necessary, and such outdoor storage

of junk, rubbish, clutter, litter or debris, regardless of quantity should be prohibited within the reasonable sight of persons lawfully traveling the public roads or alleys, or within the reasonable sight of one or more neighboring properties anywhere within any residentially zoned district within the corporate limits of the City of Buckhannon.

(D) The activities described in the immediately preceding paragraph (C) are deemed to constitute public nuisances and fire hazards.

(E) The City of Buckhannon is committed to preserving and promoting a reasonable quality of environment and aesthetically appealing, residential neighborhoods, and to prohibit activities and conduct that tend to depreciate not only the property where such activities occur but also the neighboring properties within our community.

ARTICLE III - DEFINITIONS:

(A) Enclosed porch, deck, patio or balcony = means a platform located at and attached to or abutting against the entrance to a residential building, completely covered by a roof and enclosed by fully intact glass and/or fully intact screens. Screens are framed wire mesh or framed plastic mesh used to prevent intrusion by insects but permitting airflow.

(B) Front yard = means that part of the property whereby the front of the house or other residential building faces the public street and encompasses that open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest point of the main residential building.

(C) Open storage = means such storage or accumulation that is visible from any public street, alley, or sidewalk, or from any adjacent property.

(D) Owner = means the actual, titled owner, agent or custodian of the property, whether individual or partnership association, corporation or other entity of any other kind as determined from examination of the Upshur County Clerk's records.

(E) Person = means any individual, partnership, association, corporation, or entity of any other kind, including any tenant or lessee of any real property.

(F) Yard = means any open, unoccupied space, other than a court, unobstructed from the ground to the sky, on a lot upon which a residential building is situated.

ARTICLE IV – PROHIBITED ACTS: No person in any residentially zoned district situated within the corporate limits of the City of Buckhannon shall store, collect, park, leave, deposit, maintain, reserve, put aside for future use, permit, or allow to remain on

any porch, balcony, roof, patio or yard, other than in a completely enclosed building or structure, any of the following:

(A) Junk, rubbish, clutter, litter, or debris;

(B) Lumber or other building materials or equipment except for those materials or equipment related to projects for which a current, valid building permit has been issued. Building materials shall include but are not necessarily limited to lumber, bricks, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts, shingles, mortar, concrete or cement, nails, screws, or any other materials or equipment generally used in construction; and,

(C) Upholstered furniture, mattresses, materials and other similar products not normally intended, designed, built or manufactured for outdoor use unless such is located entirely within an enclosed porch, balcony, deck or patio attached to the primary, residential building.

ARTICLE V – EXCLUSIONS: The provisions of this Ordinance shall not apply to the storage or placement upon any property of the following materials:

(A) Firewood intended for consumption in a wood-burning stove, furnace or indoor fireplace or outdoor patio fireplace located within or without a building located upon the subject premises, provided that all such firewood shall at all times be stacked and stored in an appropriate place but in no event upon the front porch of any house or other residential structure;

(B) Lawn, yard, garden, or playground tools, ornaments, equipment or implements;

(C) Lawn or patio furniture;

(D) Standing fences;

(E) Hoses or sprinklers used for watering lawns or gardens;

(F) Materials used in connection with commercial activities conducted upon the premises where such storage, placement, and accumulation of materials have been expressly authorized by the City of Buckhannon; and,

(G) Construction materials and equipment used for the construction, renovation, or razing of a building located upon the premises for which a current building or razing permit has been issued.

ARTICLE VI – ENFORCEMENT:

(A) Enforcement and Inspection Officer. The enforcement and inspection officer for purposes of this Ordinance shall be the duly appointed Zoning and Housing Enforcement Officer of the City of Buckhannon. The Zoning and Housing Enforcement Officer is hereby designated as the City official to whom all complaints of non-compliance with the provisions of this Ordinance shall be directed. The Zoning and Housing Enforcement Officer is authorized to conduct any and all reasonable or necessary inspections, whether such inspection arises from (1) a citizen complaint filed with the City, or (2) non-compliance with the provisions of this Ordinance as observed by the Officer during the course of any general inspection undertaken of the neighborhood. The Zoning and Housing Enforcement Officer further is authorized to issue and cause to be served or mailed written notices to any residential property owner whose property is deemed by the Officer to violate the provisions of this Ordinance. Any such written notice shall specifically identify all violations arising under this Ordinance, and the steps necessary to bring the property into full compliance herewith. Such notices shall permit the owner of any offending property with fifteen (15) days of acceptance of service or certified receipt of any mailed notice to bring their property into compliance with this Ordinance. Prior to referral of any violation hereunder to the City Police Department for citation issuance and prosecution before the City of Buckhannon's Municipal Court, the Zoning and Housing Enforcement Officer shall conduct a second inspection to determine if the offending property has been brought into full compliance with this Ordinance's provisions.

(B) Citizen Complaints. Any person may file a complaint with the City's Zoning and Housing Enforcement Officer alleging that a violation of this Ordinance has occurred or is occurring. The Housing and Enforcement Officer shall promptly investigate all complaints. Following the conducting of an inspection, and upon determining that a violation of this Ordinance has occurred, the Zoning and Housing Enforcement Officer shall issue a Notice of Violation and Compliance to the accused violator, which said notice shall either be personally served by a City police officer, or mailed to the violator by certified mail, return receipt requested.

(C) Notice of Violation and Compliance. The written notice prepared by the City's Zoning and Housing Enforcement Officer shall contain the following information:

- (1) the name of the titled owner, and occupant/tenant if the occupant/tenant is different from the titled owner to whom the notice shall be addressed;
- (2) the address and location of the violating property;
- (3) a statement setting forth all specific violations of this Ordinance;
- (4) a demand that corrective action be undertaken by the property owner within fifteen (15) days following service or other receipt of the written notice;
- (5) a statement that failure to comply with the notice shall result in the issuance of a citation, and upon finding of guilt, the imposition of a fine against the violating property owner; and,
- (6) enclosure of a copy of this Ordinance.

(D) Continued Violation Following Violator's Service or Receipt of Written Notice. If any reported violation of this Ordinance continues after service upon or certified mail receipt by the violating property owner and/or tenant of the violating property, of the written notice, the Zoning and Housing Enforcement Officer shall then promptly refer the matter to a City of Buckhannon police officer for citation issuance, requiring the accused violator(s) to appear before the City of Buckhannon's Municipal Court at a date and time to be set forth within the citation.

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

ARTICLE VIII – ESTABLISHMENT OF FINANCIAL ASSISTANCE PROGRAM: The City Administrator is hereby authorized and directed to develop a special fund to assist citizens of financial need in compliance with the provisions of this Ordinance. All fines collected by the City pursuant to Article VII hereof shall be dedicated to this special fund together with any other funds as shall be budgeted and approved by the City Council for this purpose. The proposed criteria for citizen participation in the fund together with the application process shall be submitted to the Council by the City Administrator on or before September 19, 2013. A motion reflecting approval by the City Council of the proposal shall be all that is required to effectuate the criteria and

application process for the special fund. The proceeds of this special fund shall be expended exclusively for the payment of fees imposed by the City's Solid Waste Transfer Station for delivery of the materials prohibited by Article IV hereof. Any citizen costs associated with the actual collection, loading and/or transfer of the prohibited materials to the Transfer Station shall be borne entirely by citizens endeavoring to comply with the provisions of this Ordinance.

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

ARTICLE X - 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., July 19, 2013.

FIRST READING:	June 6, 2013
SECOND READING, PASSAGE AND ADOPTION:	June 18, 2013

Kenneth T. Davidson, Mayor

CERTIFICATE OF ENACTMENT

I, Richard C. Clemens, City Recorder, do hereby certify that the foregoing Ordinance No. 375 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular session of the said Council assembled on June 18, 2013.

Richard C. Clemens, City Recorder