

ORDINANCE NO. 397 OF THE CITY OF BUCKHANNON, AMENDING MODIFYING AND RE-ENACTING ARTICLE 505 OF THE CITY OF BUCKHANNON, AN ORDINANCE TO BE KNOWN, CITED AND REFERRED TO AS “THE BUCKHANNON ANIMAL CARE AND CONTROL ORDINANCE”

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WHEREAS, pursuant to Chapter 8, Article 12, Section 5 (26) of the West Virginia Code, as amended, municipalities are granted plenary power and authority to regulate or prohibit the keeping of animals or fowls and to provide for impounding, sale or destruction of animals or fowls kept contrary to law or found running at large within the corporate limits; and,

WHEREAS, the Council of the City of Buckhannon now deems it to be reasonable and appropriate to adopt comprehensive regulations respecting animals kept, maintained or otherwise brought or coming into the corporate limits.

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

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

- (1) That the proper care, keeping and treatment of, and general control over animals should be an important goal of any community;
- (2) That improper care, keeping and treatment of, and general control over animals may constitute abusive or neglectful treatment of animals defined as cruelty to animals in violation of state statute;
- (3) That improper care, keeping and treatment of, and general control over animals may constitute a private and/or public nuisance, threat or danger to the neighbors of animal keepers/animal care and treatment providers, and sometimes to the entire community;
- (4) That pursuant to state statute, the governing body of a municipality is expressly permitted to regulate or prohibit the keeping of animals within the corporate limits;
- (5) That various problems have been observed within the corporate limits of Buckhannon respecting the care, keeping and treatment of, and general control over animals; and,
- (6) That the most reasonable and appropriate manner for the Council of the City of Buckhannon to respond to problems pertaining to the care, keeping and treatment of, and general control over animals is through the adoption of a comprehensive animal care and control ordinance.

505.02 - TITLE OF ORDINANCE: This Ordinance shall be known and may be cited and referred to as "The Buckhannon Animal Care and Control Ordinance."

505.03- DEFINITIONS: The following words, terms and phrases when used in this ordinance shall have the meanings ascribed to them in this ordinance, except where the context clearly indicates a contrary meaning:

- (1) abandon - the leaving of any animal without adequate attendance, provisions, or shelter for the animal's care by its owner, the person responsible for the animal's care or custody or any other person having physical possession of such animal.
- (2) animal - a living organism other than a plant or bacterium, but excluding human beings. Animal in this ordinance includes arthropods, amphibians, reptiles, birds and mammals.
- (3) animal control officer - the person employed by the Upshur County Commission, with whom the City of Buckhannon contracts, to provide various animal care and control services within the corporate limits of Buckhannon, West Virginia.
- (4) cat - any member of the felidae or feline family, but particularly domesticated or stray cats of both genders.
- (5) dangerous dog - any dog that, because of its aggressive nature, training or characteristic behavior, presents a risk of serious physical harm or death to human beings, or would constitute a danger to human life, physical well-being, or property if not kept under the direct control of the owner. This definition shall not apply to dogs utilized by law enforcement officers in the performance of their duties. The term "dangerous dog" includes any dog that according to the records of either the City/County Animal Shelter, the City's Municipal Animal Care & Control Commission, any lawfully established court or any law enforcement agency: (a) has aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property, or (b) when unprovoked, and not under the control of its owner, has chased or approached a person upon the street, sidewalks, or any public grounds in a menacing manner or apparent attitude of attack upon such person or their pet; or (c) has severely injured or killed a domestic animal or pet while off the "dangerous dog" owner's property; or (d) has been used primarily or in part for the purpose of dog fighting, or is a dog trained for dog fighting.
- (6) direct control - means immediate, continuous physical control of a dog such as by means of a leash, cord, secure fence, or chain of such strength to restrain the dog and controlled by a person capable of restraining the dog, or safe and secure restraint within a vehicle. If the controlling person is at all times fully and clearly within unobstructed sight and hearing of the dog, voice control shall be considered direct control when the dog is actually participating in

training or in an official showing, obedience, or field event. Direct control shall not be required of dogs actually participating in a legal sport in an authorized area or to government police dogs.

- (7) dog - any member of the canine family, but particularly domesticated or stray dogs of both genders.
- (8) enforcement officer - any person authorized either by this ordinance or state statute to enforce the provisions hereof, or of state law, and specifically including the city/county animal control officer and any officer of the City of Buckhannon Police Department.
- (9) impoundment - the taking or picking up and confining of an animal by any enforcement officer.
- (10) livestock - farm animals, including but not necessarily limited to pigs and swine, goats, chickens, cows, horses, sheep, turkeys, donkeys, mules, and other domesticated wild animals, excluding cats and dogs.
- (11) muzzle - a device constructed of strong, soft material or of metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.
- (12) running at large - (a) any animal not under the direct control of the owner or keeper, or (b) any animal not secured by a leash, or (c) any animal led under the control of a person other than a person physically capable of restraining the animal and obedient to that person's commands, or (d) any animal not securely enclosed within the real property limits of the owner's or keeper's premises.
- (13) sanitary condition - a condition of good order, non-malodorous, and cleanliness minimizing the possibility of disease transmission.
- (14) under restraint - an animal secured by a leash, led under the control of a person physically capable of restraining the animal and obedient to that person's command, or securely enclosed within the real property limits of the owner's premises.

505.04 - EUTHANIZING HOPELESSLY SICK AND/OR SERIOUSLY INJURED ANIMALS:

Section 1. Any animal discovered running at large which is observed to be sick or injured, upon impoundment shall be examined as promptly as is reasonable and convenient by a veterinarian. Upon any veterinarian's finding that the animal is unlikely to recover from the sickness, that is, the animal is hopelessly sick, or in the case of any animal which is seriously injured such that either the animal is unlikely or unable to recover from the serious injury, or, cannot be treated except at considerable expense, i.e., veterinary procedures exceeding One hundred dollars (\$100.00), then such animal shall be euthanized.

Section 2. Any determination by any veterinarian made pursuant to Section 1 of this Article 505.04, shall be saved and held harmless by the City of Buckhannon from exercising the discretion granted to such veterinarian therein.

Section 3. Upon determining the owner of any such animal described in Section 1 of this Article 505.04, all boarding, impoundment, veterinary, euthanizing and disposal costs shall be assessed to and paid by the animal's owner.

505.05 - ANIMALS RUNNING AT LARGE: Any owner or keeper of any animal who permits such animal to run at large shall be deemed to have violated the provisions of this ordinance, and shall be subject to the penalties of Article 505.99 hereof.

505.06 - PROPER DISPOSAL OF ANIMAL EXCREMENT BY OWNER OR KEEPER OF ANIMALS:

Section 1. No person owning or having custody of any dog, cat or any other animal shall permit any such animal to defecate (fecal excrement) upon any school, including college campus, or church ground; river or creek bank; public street, alley, sidewalk, park or any other public grounds; or any private property within the municipality, other than the premises of the owner or other person having custody of said dog, cat or other animal, unless all of such fecal excrement is immediately and completely disposed of by the person owning or having custody of any such dog, cat or other animal, all in an appropriate manner and container.

Section 2. Notwithstanding the provisions of Section 1 of this Article 505.06, the owner or person having custody of any dog, cat or other animal shall nevertheless be required periodically to properly and completely collect and dispose of any and all animal fecal excrement accumulating upon the premises of such owner or other person having custody of said dog, cat or other animal. Any detection of odor from animal fecal excrement from any neighboring property shall be deemed to constitute prima facie evidence of such dog, cat or other animal's owner or other person's failure to abide by this Section 2, and shall subject such person to the penalties of Article 505.99 hereof.

505.07- DAMAGED CAUSED BY ANIMAL TO OTHERS' PROPERTY: In addition to the penalty prescribed for violation of Section 1 of Article 505.05 hereof, and consistent with the statutory provisions of Chapter 19, Article 20, Section 13 of the West Virginia Code, as amended, any owner or keeper of any dog who permits such dog to run at large shall be liable civilly for any damages inflicted upon the person or property of another by such dog while so running at large.

505.08- RABIES CONTROL AND COMPLIANCE WITH STATE LAW; OTHER DISEASE CONTROL; SPAYING AND NEUTERING OF ANIMALS:

Section 1. All dogs and cats shall be vaccinated for rabies in the manner prescribed by state law.

Section 2. The Council of the City of Buckhannon strongly encourages all animal owners to promptly immunize and/or treat their animals for other diseases such as distemper, worms, feline leukemia, etc.

Section 3. The Council of the City of Buckhannon strongly encourages all animal owners to consider the prompt spaying or neutering of their animals.

505.09- MANDATORY REGISTRATION OF DOGS UNDER STATE LAW:

Section 1. The statutory provisions of Chapter 19, Article 20, Sections 1 and 5 of the West Virginia Code, as amended, are hereby adopted and incorporated herein.

Section 2. All dogs six (6) months of age or older, must be registered pursuant to state statute.

Section 3. All registered dogs shall at all times wear a valid registration tag issued as provided pursuant to state statute. The failure to have displayed or worn on any dog, at any time, such valid registration tag shall be prima facie evidence that such dog is not registered and such dog shall be subject to be, and shall be, impounded, sold or euthanized as provided by state statute.

505.10- OPTIONAL REGISTRATION OF CATS UNDER MUNICIPAL ORDINANCE:

Section 1. The statutes of the State of West Virginia presently do not provide for the mandatory registration of cats. Notwithstanding the lack of state statutes, the City of Buckhannon strongly recommends to all persons residing within the corporate limits of Buckhannon owning cats, that all cats be voluntarily registered at City Hall.

Section 2. The City Recorder and Treasurer shall establish reasonable and appropriate forms for completion by any owner of a cat, and further shall procure tags to implement a tag system to evidence a cat's registration with the City. The tag shall be attached to a cat's collar, not provided by the City. The initial cost of registering a cat and procuring a cat tag shall be Five Dollars (\$5.00). Tags shall not be transferable either to other owners or to other cats or other animals. If a cat is sold or ownership is otherwise transferred by one person to another person, the subsequent owner shall be required to immediately re-register the cat and hence to procure a new tag in order that the City may maintain the most current identifying information respecting any cat's true owner. Following initial registration and tag procurement, cats shall be deemed to be properly registered with the City for the lesser period of one year or through and until the next ensuing June 30. The annual renewal registration fee shall be Three Dollars (\$3.00), and the City Treasurer each year on or about May 1, shall invoice all persons who have in the preceding year registered cats. The failure of any cat owner to pay any annual, renewal fee shall result in the cat being removed from the registered list of cats maintained at City Hall. There shall be no prorating of either initial or renewal registration fees.

Section 3. In any event that a currently registered and properly tagged cat is found running at large and is captured by any enforcement officer, all reasonable efforts shall be exhausted to contact the duly registered owner of said cat, in the same manner as properly registered dogs' owners are notified, prior to invocation of the euthanasia provisions of Section 4 of Article 505.19 hereof. In the event that any tagged cat is captured, a period of five (5) days shall be added to the established pre-euthanasia time that untagged cats are kept prior to euthanasia. Owners of cats claiming their pets at the animal shelter, shall be required to pay all fees as assessed by the shelter in keeping the cats, including any additional per diem charges accruing as a consequence of application of this

Section 4. Notwithstanding application of Section 3 hereof, any cat owner claiming a cat at the animal shelter, shall be subject to the provisions and penalties of Article 505.05 hereof.

505.11- BARKING DOGS:

Section 1. No person shall keep or harbor any dog or other animal within the corporate limits which by frequent and recurring barking, howling, yelping, crying or other sounds creates unreasonably loud or disturbing noises of such a character, intensity and duration as to disturb the peace and quiet of the city. Any person who shall allow any dog or other animal to remain, be lodged or fed within any dwelling, building, yard or enclosure owned or occupied by such person, shall be deemed to be keeping or harboring such dog or other animal.

Section 2. Notwithstanding the penalties provided for violation of the provisions of this ordinance pursuant to Article 505.99, in the case of a person keeping or harboring a dog or other animal engaged in the prohibited activity described in Section 1 of this Article 505.11, any enforcement officer, including any member of the City Police Department, shall first issue a written, warning citation to such person prior to issuance of a citation for a first violation.

505.12 - DANGEROUS DOGS:

Section 1. Complaint.

Subsection (a). Any law enforcement officer, animal control officer or any adult person may request under oath that a dog be classified as dangerous as defined in this ordinance by submitting a sworn, written complaint on a form approved by the municipal court. Upon receipt of such complaint, the municipal court clerk shall see that service of the complaint is effected upon the dog owner either through personal service of process or certified mail. The police department shall conduct an investigation into the allegations and file a report with the municipal court clerk. Such report shall be made available to the dog owner prior to any evidentiary hearing.

Section 2. Hearing on Complaint.

A determination hearing shall be conducted by the municipal court judge whenever there is cause to believe that a dog may be a “dangerous dog” as defined in Article 505.03 above. Such hearing shall be conducted within five (5) days of the service of the complaint upon the dog owner or as soon thereafter as practical. Pending the outcome of such a hearing, the dog shall be securely confined in a humane manner on either the premises of the owner, with a licensed veterinarian or with the Upshur County Animal Control Facility.

The municipal court judge shall determine whether to declare the animal to be a “dangerous dog” based upon evidence and testimony presented at the time of the hearing by the owner, witnesses to any incident(s) which the court considers germane to such determination, health department personnel, animal control authority personnel, law enforcement officers or any other person possessing information pertinent to such determination. The Court, in its discretion and within its equitable powers may permit the dog owner and the appropriate governmental agency (Animal Control Facility/Police Department) to enter into an agreement to impose certain restrictions on the dog and hold in abeyance any further hearing/hearings on the matter.

Section 3. Evidence Considered.

Evidence to be considered by the municipal court in a hearing required under this section shall include but not be limited to the following: (i) provocation; (ii) severity of attack or injury to a person or domestic animal; (iii) aggressive history of the dog; (iv) observable behavior of the dog; (v) site and circumstances of the incident; and (vi) statements from witnesses.

Section 4. Decision and Appeal.

The municipal court judge shall render a written decision within five (5) days after the determination hearing or as soon thereafter as practical but in no event more than fifteen (15) days after the hearing. The decision of the municipal court judge is final unless appealed to the Circuit Court of Upshur County, West Virginia within twenty (20) days of entry of the decision.

Upon a determination that a dog is dangerous, the municipal court may order payment by the dog owner of all costs incurred by the city including the costs of impoundment, and may also order payment of veterinarian or medical bills incurred by a victim.

A determination that the dog is a “dangerous dog” as the same is defined herein shall subject the dog and its owner to any or all of the provisions of this article.

Section 5. Keeping of Dangerous Dogs. Any dog adjudicated as dangerous in accordance with Sections 1-4 above shall be subject to any or all of the following;

Subsection (a). Leash. No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its kennel, pen or other proper enclosure unless such dog is securely attached to a leash not more than four (4) feet in length. No such person shall permit a dangerous dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person capable of controlling the dog is in physical control of the leash.

Subsection (b). Muzzle. It shall be unlawful for any owner or keeper of a dangerous dog to allow the dog to be outside of its proper enclosure unless it is necessary for the dog to receive veterinary care or exercise. In such cases, the dog shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the dog’s breathing or vision.

Subsection (c). Confinement. Except when leashed and muzzled as provided in this Section 5, a dangerous dog shall be securely confined indoors or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements: (i) the structure must have secure sides and a secure top, or all sides must be at least eight (8) feet high; and (ii) the structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and (iii) the structure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own.

Subsection (d). Indoor Confinement. No dangerous dog shall be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog shall be kept in a house or structure when the windows or screen doors are the only obstacle preventing the dog from exiting the structure.

Subsection (e) Spaying or Neutering. Upon a determination that a dog is dangerous, the municipal court judge may order the dog to be either spayed or neutered and may order the dog owner to bear the expense of such procedure(s).

Subsection (f). Signs. All owners, keepers or harborers of dangerous dogs shall display in a prominent place on their premises at least one (1) sign easily readable by the public using the words, "Beware of Dog."

Subsection (g). Liability Insurance, Surety Bond. The owner of a dangerous dog shall present to the City proof that he or she has procured liability insurance or a surety bond in the amount of not less than one hundred thousand dollars (\$100,000) covering any damage or injury that may be caused by such dangerous dog. The policy shall contain a provision requiring that the City be notified immediately by the agent issuing the policy in the event that the insurance policy is canceled, lapses, terminates or otherwise expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a dangerous dog. The dog owner shall sign a statement attesting that he or she shall maintain and not voluntarily cancel the liability insurance policy during the twelve (12) month period for which a permit is sought, unless he or she ceases to own or keep the dog prior to the expiration of the permit period. In the event that the owner proves to the satisfaction of the City that insurance is not available, he or she may pay a non-refundable cash fee in the amount of one thousand dollars (\$1,000) to the City.

Subsection (h). Annual renewal registration. Notwithstanding any other provision of this Article 505.12, the owner or keeper of a dangerous dog shall renew the registration of the dog on or before each July 1, and the renewal period shall be deemed to continue until the following June 30. The annual, renewal fee for registration of a dangerous dog shall be ten dollars (\$10.00). Any fee paid pursuant to this Article 505.12 shall not be refundable nor shall any fee be prorated.

Subsection (i). Animals born of Registered Dogs. All offspring born of dangerous dogs registered with the City also must be registered with the City within six (6) weeks of birth.

Subsection (j). Notification of Escape or Death of Dog. The owner or keeper of a dangerous dog shall notify the City Recorder immediately if such dog escapes from its enclosure or restraint and is at large. Such immediate notification further shall be required if the dog bites or attacks a person or other domesticated animal. The owner or keeper of a dangerous dog shall notify the City Recorder within ten (10) business days of the death of any dog registered as a dangerous dog.

Subsection (k). Failure to Comply. It shall be unlawful and a misdemeanor for any owner or keeper of a dangerous dog registered with the City to fail to comply with any requirements or condition set forth in this Section 5 of Article 505.12. Any dog found to be in violation of this Section 5 shall be subject to immediate seizure and impoundment. In addition, failure to comply with the requirements and conditions set forth in this Article 505.12 shall result in the revocation of the dog's license and the permit providing for the keeping of such dangerous dog.

Section 6. Permit and Tag Required for a Dangerous Dog.

Subsection (a). The owner of a dangerous dog shall, within three (3) business days after the classification of the dog as dangerous or upon acquisition of such a dog, obtain an annual permit from the City to harbor the dog. The fee for such permit shall be fifty dollars (\$50.00) per year.

Subsection (b). At the time the permit is issued, a red circular tag shall be issued to the owner of the dangerous dog. The tag shall be worn at all times by the dog to clearly and easily identify it as a dangerous dog.

Subsection (c). The permit for maintaining a dangerous dog shall be presented to any enforcement officer upon demand.

Section 7. Notification of Intent to Impound for Violation of Section 5, Article 505.12.

Subsection (a). When the municipal court judge, upon proper complaint, intends to impound a dangerous dog for violation of any requirement or condition of Section 5 hereof, the municipal court clerk shall first notify the owner or custodian of the dog, by certified mail, of the intended impoundment at least five (5) business days prior to the intended impoundment, except as otherwise provided in Section 8 hereof.

Subsection (b). The notice of intent to impound shall inform the owner or custodian of the dog that the owner or custodian may request in writing, within five (5) business days prior to the intended impoundment, a hearing before the municipal court to contest the intended impoundment and finding of violation.

Subsection (c). Upon request by the owner or custodian of the dog for a hearing pursuant to Subsection (b), a hearing shall be held within ten (10) business days after the request for a hearing. Notice of the date, time and location of the hearing shall be provided by certified mail to or personal service of process upon the dog's owner or custodian requesting such hearing.

Subsection (d). If the owner or custodian requests a hearing pursuant to subsection (b), no impoundment shall occur until conclusion of a hearing upholding the finding of violation, except as authorized by Section 8 hereof.

Section 8. Immediate Impoundment.

Subsection (a). A dog declared to be dangerous may be immediately impounded without a pre-impoundment hearing when the municipal court judge, determines that such immediate impoundment is necessary for the protection of public health or safety. Such immediate impoundment may be ordered for violation of Section 5 or upon the dog biting a person or domestic animal.

Subsection (b). The owner or custodian of the dog immediately impounded pursuant to Subsection (a) hereof, shall be notified of the impoundment by certified mail or personal service of process within five (5) days following the dog's impoundment.

Subsection (c). The notice of impoundment shall inform the owner or custodian of the dog that the owner or custodian may request, in writing, a hearing to contest the impoundment within five (5) business days after the mailing of the notice of impoundment.

Subsection (d). Upon request by the owner or custodian of the dog for a hearing under Subsection (c) hereof, a hearing shall be held within ten (10) business days after such request. Notice of the date, time and location of the hearing shall be provided by certified mail to or personal service of process upon the dog owner requesting the hearing.

Section 9. Impoundment Hearing.

Subsection (a). If after a hearing on impoundment, the court finds no violation of Section 5, or that the dog has not bitten an individual, the dog shall be returned to its owner or custodian if already impounded, or shall not be impounded as intended.

Subsection (b). Incident to the findings and conclusions made at the impoundment hearing, the court may impose reasonable restrictions and conditions for the maintenance of the dog to ensure the health and safety of the public and the animal. Such conditions may include but shall not be limited to:

- (i) posting of bond or other proof of ability to respond in damages;
 - (ii) specific requirements as to size, construction and design of a kennel in which to house the dog;
 - (iii) requirements as to type and method of restraint and/or muzzling of the dog;
 - (iv) photo identification or permanent marking of the dog for purposes of identification;
- and,

- (v) payment of reasonable fees to recover the costs incurred by the City and/or Lewis-Upshur County Animal Control Authority in ensuring compliance with this Article 505.12.

Section 10. Change of Ownership.

Subsection (a). Any owner of a dangerous dog who sells or otherwise transfers ownership, custody or residence of the dog, shall within five (5) business days after effecting such change of ownership or residence of the dog, provide written notification to the City of the name, address and telephone number of the new owner. It also shall be the responsibility of the person transferring ownership or custody of the dog to provide written notification of the dog's classification as dangerous to the person receiving the dog. The previous owner shall furnish a copy of such notification to the City along with written acknowledgment by the new owner of the new owner's receipt of such notification.

Subsection (b). Any person receiving a dog classified as dangerous must obtain the required permit, tag and enclosure prior to taking physical custody of the dog. The new owner shall comply fully with the provisions of the article 505.12 pertaining to obtaining liability insurance, registration, payment of fees, and maintenance, control and ownership of a dangerous dog.

Section 11. Continuation of Dangerous Dog Declaration.

Subsection (a). Any dog that has been declared dangerous by any agency or department of this City, another municipality, county, state or agency or department of any of the foregoing, shall be deemed to be a dangerous dog in this city, and shall be subject to the provisions of this ordinance for the remainder of the dog's life.

Subsection (b). Any person owning or having custody of any dog which has been designated by any agency or department referenced in subsection (b) hereof, as a dangerous dog, or similar adjective such as but not limited to "vicious", or any dog otherwise meeting the criteria of this Article 505.12 as being a dangerous dog, shall notify the City Recorder in writing of the dog's address and conditions of maintenance, and shall register the dangerous dog with the City Recorder, within ten (10) days of moving the dog into the corporate limits of Buckhannon. The restrictions and conditions of maintenance of any dog declared dangerous by this City, another municipality, county or state or any agency or department thereof, shall remain in full force and effect at all times while the dog remains in this City.

505.13- PROHIBITION FROM KEEPING OF WILD, EXOTIC OR DANGEROUS ANIMALS WITHIN THE CORPORATE LIMITS:

Section 1. It shall be unlawful for any person to keep, possess, harbor, sell or in any other manner engage in the commerce of any of the following species of animals within the corporate limits:

- (a) all poisonous snakes or poisonous reptiles;
- (b) all nonpoisonous snakes exceeding six (6) feet in length;
- (c) crocodilians, exceeding one (1) foot in length;
- (d) gorillas, chimpanzees, orangutans, baboons and any other primates;
- (e) any species of feline not falling within the category of ordinary domesticated house cats;
- (f) bears of any kind;
- (g) raccoons, skunks, woodchuck, fisher, beaver, or other like species
- (h) foxes, wolves, coyotes or other species of canines other than dogs

Section 2. Notwithstanding Section 1 of this Article 505.13, any person may apply for a permit temporarily exempting them from the prohibition of keeping wild, exotic or dangerous animals within the corporate limits upon submitting the following information in writing upon a form provided by the City:

- (a) the purpose of keeping such animal or animals otherwise prohibited is for educational, scientific or exhibition purposes, such as for part of a program at one of the schools located within Buckhannon, or at West Virginia Wesleyan College, or for display during the West Virginia Strawberry Festival;
- (b) the keeping of the animal or animals within the corporate limits shall not exceed one (1) week in duration;

- (c) the applicant produces proof of a minimum of \$100,000 in liability insurance insuring the keeper against risk of harm to others caused by such animal or animals;
- (d) the applicant provides the full names of all employees and/or other keepers who are involved with the display or exhibition while in the corporate limits;
- (e) the applicant lists all wild, exotic or dangerous animals covered by the permit; and,
- (f) the applicant has not previously had any permit revoked by the City of Buckhannon, nor has any employee and/or other keeper involved with the display or exhibit had any permit revoked by the City.

Section 3. The applicant for a permit described in Section 2 of this Article 505.13 upon payment of a nonrefundable fee of one hundred dollars (\$100.00) shall be granted a permit. The fee shall cover all animals listed on the application. In cases where the keeper is not in any manner charging a fee or otherwise being compensated for the display or exhibition of the animal or animals and the purpose of the display or exhibit is entirely for educational and/or scientific purposes, then the application fee shall be waived by the City.

Section 4. Any person who in the discretion of any enforcement officer exposes any person to undue risk of harm as a result of the display or exhibition of any animal, shall have the permit described in Section 2 and 3 hereof, immediately revoked, and shall immediately remove all such wild, exotic or dangerous animals from the corporate limits.

Section 5. Any person who fails to abide by the immediate removal of animals' provision of Section 4 hereof, shall be subject to a fine of up to five hundred dollars (\$500.00), and in the discretion of the municipal court judge, confinement up to thirty (30) days.

Section 6. Any keeper who has previously had any permit described in Sections 2 and 3 hereof, revoked by the City, shall not be eligible to apply for any additional permits, nor shall any keeper who has previously had any such permit revoked be permitted to be in the employment of any other applicant for such permit.

505.14 - FEEDING OF UNDOMESTICATED OR STRAY DOGS OR CATS:

It shall be unlawful for any person to place, or cause to be placed any type of food upon any property for the purpose of feeding or watering any stray dog or cat, i.e.: a dog or cat running at large and apparently unregistered by an owner. Any person, however, may adopt any stray dog or cat through proper registration of the animal.

505.15- CONDITION OF PREMISES WHERE ANY ANIMAL IS LAWFULLY KEPT:

The premises wherein all animals are kept or maintained within the corporate limits of the City of Buckhannon, shall be kept in a sanitary condition, and further in such a manner so as not to violate the provisions of Article 505.16 hereof.

505.16. ANIMAL CRUELTY AND TETHERING OF DOGS PROHIBITED; EXCEPTIONS:

Section 1. CRUELTY TO ANIMALS

(a) No person shall cruelly mistreat, abandon or withhold proper sustenance, including food, water, shelter that protects from the elements, exercise or medical treatment, necessary to sustain normal health and fitness or to end suffering or abandon any domesticated animal to die, or intentionally, knowingly or recklessly leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result, or ride an animal when it is physically unfit, or injure any animal for the purpose of making it perform for a person's amusement, or cruelly chain, tether or confine outside any animal or use, train or possess any domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

(b) Exceptions. Nothing in subsection (a) of this subsection shall be deemed to prohibit;

- (1) Any action by licensed veterinarian done in accordance with accepted standards of veterinary care;
- (2) Any action by a law enforcement officer pursuant to the interest of public health and safety;
- (3) Any act done in self-defense or done to defend another person or animal.

Section 2. TETHERING OF DOGS

(a) Tethering: It shall be unlawful for any person to tether, fasten, chain, tie, restrain or cause a dog to be fastened, chained, tied or restrained to houses, trees, fences, garages or other stationary or highly immobile objects by means of a rope, chain, strap or other physical restraint for the purpose of confinement, except in circumstances where all of the following requirements are met:

- (1) The tethering shall be no longer than necessary for the dog's caretaker or owner to complete a temporary task that requires the dog to be physically restrained for a reasonable period of time;
- (2) Notwithstanding the requirements of Article 505.16, Section 2(a) (1) above, no dog shall be tethered for any period of time in excess of ten (10) hours in any twenty-four (24) hour period.
- (3) The dog must be properly fitted with and wearing a non-choke harness or collar made of leather, nylon, or similar material. Choke or prong collars shall not be used;
- (4) The tether must be attached to the dog's harness or collar and not directly to the dog's neck;
- (5) The tether must be a reasonable length and weight according to the dog's weight and the size of the property.
- (6) The dog is tethered so as to prevent injury, strangulation, or entanglement;
- (7) The dog is not tethered outside during extreme weather;
- (8) The dog is six (6) months of age or older;
- (9) The dog is not a nursing mother or sick or injured;
- (10) If there are multiple dogs, each dog is tethered separately;
- (11) The dog (s) must be tethered at sufficient distance from any other objects to prohibit the tangling of the cable, from extending over an object or an edge that could result in injury of strangulation of the animal.
- (12) A running line or trolley system, if utilized, must be at least fifteen (15) feet in length and at least four (4) feet and no more than seven (7) feet above ground;

Section 3. FOOD, WATER, AND SHELTER

- (a) Food. Animals must be provided with food of sufficient quantity and quality to allow for normal growth or the maintenance of body weight.
- (b) Water. Animals must be provided with potable water in sufficient quantity to satisfy the animal's needs. Snow or ice is not an adequate water source.
- (c) Shelter. Animals must be provided with adequate shelter to provide for their health and welfare. A shelter that protects the animal from inclement weather, wind, and direct rays of the sun, shelter shall be provided and accessible to each dog. Examples of inadequate shelters include, but are not limited to, lean-tos, metal drums, standard unmodified plastic drums, cardboard or other disposable boxes, vehicles, or the area on or beneath exposed porches or exposed decks.
- (d) Confinement Areas. A confinement area must provide sufficient space to allow each animal to turn about freely and to easily stand, sit and lie in a normal position. If an animal is maintained in an outdoor confinement area, that space should contain a shelter that complies with the following sections.
 - (1) General. A person in charge or control of any dog which is kept outdoors or kept in an unheated enclosure shall provide the dog with shelter and bedding as prescribed in this section as a minimum.
 - (2) Building specifications. The shelter shall include a moisture proof and windproof structure size to accommodate the dog and allow retention of body heat. It should be made of durable material with a solid, moisture-proof floor or a floor raised at least two inches from the ground. The structure shall be provided with a sufficient quantity of suitable bedding material during inclement weather to provide insulation and protection against cold and dampness and promote retention of body heat.
 - (3) Shade. Shade from the direct rays of sun shall be provided.
 - (4) Outdoor areas. Outdoor areas shall be maintained as follows:
 - A. Outdoor Pens. If an animal is confined in an outdoor pen, it must be of adequate and reasonable size and in no event less than a 10' x 10' (100 square feet) area per dog.
 - B. Extreme Weather - Dogs shall not be penned outside during extreme weather unless the pen is equipped to provide adequate protection.
 - (5) Surface area. The interior surfaces of all indoor confinement areas must be constructed and maintained so that they are substantially impervious to moisture, provided for adequate drainage may be readily cleaned, kept in good repair, and protect the animal from injury. Confinement areas should be ventilated sufficiently to allow for the free movement of air in and around the confinement area. All outdoor confinement area flooring should be impermeable material or well drained aggregate.
 - (6) Waste. A suitable method must be used to eliminate excess fluids from confinement areas. All feces should be removed and disposed of properly.

Section 4. ENFORCEMENT; PENALTIES

- (a) Enforcement.
 - (1) First Offense: Any humane officer or law enforcement officer who determines an animal is being kept in violation of any section of this ordinance shall issue a warning to the owner or guardian of the animal or property owner on which the violation is present. The owner or guardian will be given a reasonable amount of time to correct the violation, not to exceed 72 hours.
 - (2) Second Offense: If the animal continues to show evidence of cruelty or inhumane treatment as set forth in this ordinance, the owner or guardian of the animal shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred or more than one thousand dollars. In addition, any humane officer or law enforcement officer may, on or after the second offense, take into custody, upon either private or public property, an animal which clearly shows evidence of cruel or inhumane treatment as set forth in this ordinance. Such animal may be subject to forfeiture in accordance with state and local law.
 - (3) Additional Offense(s): For each subsequent offense, the owner shall be punishable by a fine of not less than three hundred nor more than two thousand dollars.
- (b) In addition to the fines and penalties imposed by this section, any defendant convicted of a violation under this ordinance shall pay the Lewis-Upshur County Animal Control Facility or other animal

care provider, as a penalty, all reasonable expenses incurred for the care, treatment and boarding of any animals taken into custody pursuant to this ordinance. Such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the Lewis-Upshur County Animal Control Facility.

505.17 - LIVESTOCK REGULATION:

Section 1. Livestock, or farm animals, shall not be kept or maintained within the corporate limits at any time, except within any Agricultural, "A", zoned district.

Section 2. Notwithstanding Section 1 of this Article 505.17, any livestock, or farm animals, lawfully kept or maintained in any such Agricultural, "A", zoned district, shall be properly corralled, penned, fenced, cooped, or otherwise contained so as to prevent such livestock from leaving the owner's premises.

Section 3. Further notwithstanding Section 1 of this Article 505.17, any person may apply for a permit temporarily exempting them from the prohibition of keeping livestock within the corporate limits upon submitting the following information in writing upon a form provided by the City:

- (a) the purpose of keeping such animal or animals otherwise prohibited is for educational, scientific or exhibition purposes, such as for part of a program at one of the schools located within Buckhannon, or at West Virginia Wesleyan College, or for display during the West Virginia Strawberry Festival;
- (b) the keeping of the animal or animals within the corporate limits shall not exceed one (1) week in duration;
- (c) the applicant produces proof of a minimum of \$100,000 in liability insurance insuring the keeper against risk of harm to others caused by such animal or animals;
- (d) the applicant provides the full names of all employees and/or other keepers who are involved with the display or exhibition while in the corporate limits;
- (e) the applicant lists all livestock covered by the permit; and,
- (f) the applicant has not previously had any permit revoked by the City of Buckhannon, nor has any employee and/or other keeper involved with the display or exhibit had any permit revoked by the City.

Section 4. The applicant for a permit described in Section 3 of this Article 505.17 upon payment of a nonrefundable fee of ten dollars (\$10.00), shall be granted a permit. The fee shall cover all animals listed on the application. In cases where the keeper is not in any manner charging a fee or otherwise being compensated for the display or exhibition of the animal or animals and the purpose of the display or exhibit is entirely for educational and/or scientific purposes, then the application fee shall be waived by the City.

505.18 - MISCELLANEOUS PROVISIONS:

Section 1. No person shall cast or put any sick, dying or dead dog, cat or other animal on any premises, private or public, within the corporate limits.

Section 2. The owner of any animal within the corporate limits, whose animal has died, shall attend to the immediate, proper and sanitary disposal and/or interment of such animal in such a manner to prevent accessibility to any animal remains by any other person or animal.

Section 3. The animal control officer or such other designated employees of the City shall cause to be removed as promptly as possible, any animal found dead upon any street or other public place within the corporate limits.

505.19- CITY COOPERATION WITH STATE AND/OR COUNTY AUTHORITIES RESPECTING THE TRAPPING, CAPTURING, KEEPING, PLACING FOR ADOPTION, EUTHANIZING, RELOCATING AND/OR DISPOSING OF DOGS AND CATS RUNNING AT LARGE, UNDOMESTICATED, WILD OR STRAY ANIMALS:

Section 1. The City through its employees, agents and contractors, shall work cooperatively with all state and/or county agencies and other authorities in alleviating problems and nuisances created by dogs and cats running at large.

Section 2. The City shall establish or otherwise participate with other state and/or county agencies in establishing a system for the humane trapping, capturing and keeping of any and all dogs and cats running at large.

Section 3. The City shall apply reasonable means of locating the true owner of any registered dog or cat trapped or captured, and returning any such dog or cat to its owner. Alternatively, any such unregistered dog or cat may be offered for immediate adoption to any adult person upon payment by such person of any requisite fees, and any registered dog or cat may be offered for adoption to

any adult person following the established holding period and upon payment by such adopting person of any requisite fees.

Section 4. Following the passage of the reasonable time established in accordance with the policies of the Upshur-Lewis County Animal Shelter, and in the event of the failure to locate the true owner, and in the further event of the failure to realize the adoption of any such dog or cat, such dog or cat may be euthanized in a humane manner. The remains of any euthanized animal shall be promptly disposed of in a proper and sanitary manner.

Section 5. The City through its employees, agents and contractors, shall work cooperatively with all state and/or county agencies and other authorities in alleviating problems and nuisances created by other undomesticated, wild or stray animals, other than dogs and cats. The means of alleviating such problems and nuisances shall be in accordance with practices or policies either specifically established or as accepted by the West Virginia Bureau of Commerce's Division of Natural Resources.

Section 6. The trapping, capturing, hunting, drugging, poisoning, or killing of any domesticated animal, including any dog or cat, except as otherwise expressly authorized by this ordinance shall be strictly prohibited within the corporate limits. Any person charged with a violation of this Section 6 of Article 505.19 shall not be permitted to assert as a defense that the means of trapping, capturing, hunting, drugging, poisoning or killing of any domesticated animal was intended to affect the trapping, capturing, hunting, drugging, poisoning or killing of some non-domesticated animal.

505.20 - ESTABLISHMENT OF MUNICIPAL ANIMAL CARE AND CONTROL COMMISSION:

Section 1. For purposes of receiving input from the residents of the corporate limits and surrounding Upshur County respecting matters concerning the care and control of animals in general, and of the application and enforcement of the provisions of this ordinance in particular, and the policies and regulations of the City in general respecting the care and control of animals within the corporate limits, there is hereby created the Municipal Animal Care and Control Commission.

Section 2. The Commission shall for all purposes be deemed to be and shall serve as an administrative subdivision of the City of Buckhannon, and shall convene public meetings from time to time to permit local residents the opportunity to be heard upon matters involving or affecting animals within the corporate limits.

Section 3. The Commission shall not have rule-making authority, except insofar as establishing reasonable and necessary rules for the conducting of Commission meetings, but rather the Commission shall serve as a municipal agency of the City, to recommend amendments or additions to this ordinance and to the policies and regulations of the City respecting animal care and control.

Section 4. The Commission shall be convened at least annually, and shall consist of five (5) voting members constituted as follows: (1) the Mayor of the City of Buckhannon who shall serve as Chairperson; (2) the President of the Upshur County Humane Society or such other designee of the Humane Society, as designated in writing; (3) a veterinarian practicing in Upshur County, West Virginia, duly appointed by the City Council; and (4) and (5) two residents of the City of Buckhannon, duly appointed as "at large" members by the Council of the City of Buckhannon. The terms of service for the five (5) members shall be in the case of the mayor for the term of office, and for all other members for a one (1) year term beginning each July 1, unless otherwise specified by the Council. Members may be reappointed by the Council for unlimited terms of service. Additionally, the Council may from time to time appoint other non-voting member, who may or may not be residents of the corporate limits, as nominated by the Mayor. A quorum shall be deemed to be the presence of any three (3) voting members of the Commission.

Section 5. All recommendations which the Commission seeks the Council to formally consider, shall be submitted to the Council in written form, and shall be duly considered by the Council during a regularly convened council meeting with the Commission's report to be made a part of the minutes of the Council meeting during which the recommendations are considered.

Section 6. The City Recorder of Buckhannon shall serve as the ex officio secretary of the Animal Care and Control Commission, and shall take and maintain all minutes of all meetings together with appropriate correspondence received or generated by the Commission.

505.21 - EFFECT UPON OTHER MUNICIPAL ORDINANCES: Any and all other ordinances of the City of Buckhannon not amended hereby, shall remain in full force and legal effect except for those provisions which are expressly amended pursuant to the provisions hereof.

505.22 - SEVERABILITY: In the event that any section(s) or provision(s) of this Ordinance is determined to be violative of state or federal statute or court ruling, unconstitutional, invalid or otherwise

unenforceable by a Court of competent jurisdiction, such determination shall not affect the validity of this Ordinance as a whole or the sections and provisions thereof which are not specifically held to be violative of state or federal statute or court ruling, unconstitutional, invalid or otherwise unenforceable.

505.23 - 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.

505.99- PENALTIES FOR VIOLATIONS OF THE REQUIREMENTS OF THIS ORDINANCE:

Section 1. Except as otherwise expressly provided herein or as otherwise expressly mandated by state statute, the commission of a first violation of any provision of this ordinance shall be considered a misdemeanor offense, and shall upon conviction thereof, result in the assessment by the Municipal Court Judge of a fine in an amount not exceeding twenty-five dollars (\$25.00) plus all costs of the proceeding, including any costs assessed by the city/county animal shelter.

Section 2. Except as otherwise expressly provided herein, the commission of a second violation of any provision of this ordinance shall be considered a misdemeanor offense, and shall upon conviction thereof, result in the assessment by the Municipal Court Judge of a fine in an amount not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), plus all costs of the proceeding, including any costs assessed by the city/county animal shelter.

Section 3. Except as otherwise expressly provided herein, the commission of any third or subsequent violation of any provision of this ordinance shall be considered a misdemeanor offense, and shall upon conviction thereof, result in the assessment by the Municipal Court Judge of a fine in an amount not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) plus all costs of the proceeding, including any costs assessed by the city/county animal shelter, and further in the discretion of the Municipal Court Judge, any such person convicted of any third or subsequent violation of any provision of this ordinance may be ordered to be confined for a period not exceeding thirty (30) days.

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FIRST READING:

February 18, 2016

SECOND READING, PASSAGE AND ADOPTION:

March 3, 2016

Rick Edwards, Mayor

CERTIFICATE OF ENACTMENT

I, Amberle Jenkins, Assistant City Recorder, do hereby certify that the foregoing Ordinance No. 397 amending, modifying and re-enacting Article 505 of the Codified Ordinances of the City of Buckhannon, was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on March 3, 2016.

Amberle Jenkins, Assistant City Recorder