

ORDINANCE NO. 418 OF THE CITY OF BUCKHANNON, AN ORDINANCE
PROVIDING FOR THE REGULATION OF THE USE OF CONSUMER FIREWORKS
AND SPARKLING DEVICES WITHIN THE MUNICIPAL
BOUNDARIES OF THE CITY OF BUCKHANNON

WHEREAS, House Bill 2852, enacted by the Legislature of West Virginia during the 2016 Regular Session of the Legislature defined and legalized certain classes of consumer fireworks which had previously been illegal, including consumer fireworks; and,

WHEREAS, said House Bill 2852, as codified in West Virginia Code §29-3E-10, does not affect the authority of the governing body of a municipality to prohibit or regulate the use of consumer fireworks within its boundaries; and,

WHEREAS, since the enactment of said House Bill 2852, the use of consumer fireworks within the municipal boundaries of the City of Buckhannon has on many occasions, especially when used late at night and during times which are not traditionally associated with the use of consumer fireworks, have constituted a nuisance and negatively impacted the health and safety of people and animals situate within the City of Buckhannon, including pets or other domesticated animals, persons suffering from Post Traumatic Stress Disorder, and others who wish to peaceably enjoy their homes and property; and,

WHEREAS, the use of consumer fireworks within the municipal limits of the City of Buckhannon in many instances constitute violations of the City's Noise Ordinance (Ordinance No. 365) and Zoning Ordinance (Ordinance No. 244); and,

WHEREAS, West Virginia Code § 8-12-5(13) empowers the City of Buckhannon to "prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome"; and

WHEREAS, West Virginia Code § 8-12-5(14) empowers the City of Buckhannon to "regulate the keeping of gunpowder and other combustibles"; and,

WHEREAS, West Virginia Code § 8-12-5(15) empowers the City of Buckhannon to "make regulations guarding against danger or damage by fire"; and,

WHEREAS, the Council of the City of Buckhannon desires in all respects to maintain the City of Buckhannon as a place wherein its residents may enjoy their homes and property in quiet and peaceable enjoyment and where people and animals may not

be subject to unnecessary or unreasonable nuisance or disturbance from the unexpected discharge of consumer fireworks, while facilitating the purposes of state law as expressed in the said House Bill 2852, which includes promoting the sale of consumer fireworks as a means of raising funds for veterans' programs and fire departments.

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

ARTICLE I - DEFINITIONS: As used in this ordinance, the terms "consumer fireworks", "fireworks", "person", and "sparkling devices" shall have the same meanings as set forth in West Virginia Code § 29-3E-2:

ARTICLE II - FINDINGS: The Council of the City of Buckhannon finds that 1) the ignition, discharge, or firing of fireworks present a danger of injury or annoyance to individuals and the public, and are inherently dangerous and potentially offensive; 2) that fireworks include gunpowder or other combustibles as a component thereof; 3) that the ignition, discharge, or firing of fireworks present a threat of danger or damage by fire; and 4) that the ignition, discharge or firing of fireworks presents unique hazards to individuals afflicted with certain conditions, including but not limited to post-traumatic stress disorder, as well as domesticated animals, and the Council sincerely desires to mitigate or alleviate any opportunity for distress and discomfort caused by the use of fireworks for these members of our community.

ARTICLE III – PROHIBITIONS: Except as provided in Ordinance No. 365 of the City of Buckhannon, no person shall use, ignite, discharge, or fire consumer fireworks within the corporate limits of the City of Buckhannon, except as follows:

- 1) Between the hours of 11:00 a.m. and 11:00 p.m. on July 4, Independence Day;
- 2) Between 11:00 a.m. on December 31 and 12:30 a.m. on January 1;
- 3) Between 11:00 a.m. and 11:00 p.m. on the Saturdays preceding and following Independence Day, if Independence Day does not fall on a Saturday in a given year; and,
- 4) At such other times, and on such other dates, as the Council may set by Resolution or, only in the event of a spontaneous public celebration where prior approval of the Council is not reasonably possible, by proclamation of the Mayor.

ARTICLE IV – REGULATIONS:

- (1) A person may not intentionally use, ignite, discharge or use consumer fireworks on public or private property without the express permission of the owner of such property to do so.
- (2) A person may not intentionally use, ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle, boat or building.
- (3) A person may not intentionally use, ignite or discharge any consumer fireworks or sparkling devices into, on, or at a boat, motor vehicle or building, or at any person or group of people.
- (4) A person may not intentionally use, ignite or discharge any consumer fireworks while the person:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug;
 - D. Is under the combined influence of alcohol and any controlled substance or any other drug.
- (5) A person who is less than eighteen years of age or younger shall only use, ignite or discharge consumer fireworks under the direct supervision of his or her parent, guardian or other adult person having the care and custody of the minor. No person who is less than twelve years of age shall use, ignite or discharge consumer fireworks.
- (6) All persons who use, ignite or discharge consumer fireworks or sparkling devices shall be responsible for the removal of all debris accumulated within twenty-four hours of such use and be financially responsible for all cleanup costs and damages due to the ignition, discharge or use of such fireworks.
- (7) All persons who use, ignite or discharge consumer fireworks or sparkling devices shall be responsible for all fire suppression costs and expenses incurred by the City related to the use of such fireworks.
- (8) All persons who use, ignite or discharge consumer fireworks shall abide by all legal requirements concerning such fireworks use, including the provisions of West Va. Code 29-3E-1 et seq., and Title 103 Legislative Rule West Virginia Fire Marshall Series 4 Regulation of Fireworks.

(9) All persons who use, ignite or discharge consumer fireworks shall ensure that such consumer fireworks are not propelled through, come in contact with, or discharge or explode onto any public street, highway or sidewalk, in or upon any building, at or near any person, utility pole or utility line, including electrical, cable, telephone, or gas lines, or within 500 feet of any location posing a special fire danger, such as a gas station, lumber yard, bulk mulch, propane or chemical storage area.

(10) No person shall use, ignite or discharge consumer fireworks during periods of very high or extreme fire danger as determined by the City Fire Department or the West Virginia Division of Forestry or while wind conditions are such that proper fireworks control cannot be exercised.

(11) Officers of the Police Department and the Fire Department, and the Zoning Enforcement Officer shall have power to enforce this Ordinance.

ARTICLE V – PENALTIES: Any person who violates the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$100.00 nor more than \$200.00 for the first offense; shall be fined not less than \$200.00 nor more than \$350.00 for the second offense; and shall be fined not less than \$350.00 nor more than \$500.00 for any third or subsequent offense. Any persons charged with enforcement of this section may seize, take or remove all consumer fireworks intended to be used in violation of this Ordinance, and upon order of the Municipal Court Judge, said consumer fireworks shall be disposed of at public auction or destroyed at the expense of the person from whom the same were seized.

ARTICLE VI – 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 VII – EFFECT UPON CITY ORDINANCE NOS. 244 and 365: This Ordinance shall not amend, repeal, or otherwise affect any provision of Ordinance Nos. 244 or 365, which shall be deemed to remain in full force and effect.

ARTICLE VIII - 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 1, 2017.

FIRST READING: May 16, 2017

SECOND READING, PASSAGE AND ADOPTION: June 1, 2017

David W. McCauley, Mayor

CERTIFICATE OF ENACTMENT

I, Susan Aloï, City Recorder, do hereby certify that the foregoing Ordinance No. 418 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on June 1, 2017.

Susan Aloï, City Recorder