

**ORDINANCE NO. 423 OF THE CITY OF BUCKHANNON, AN ORDINANCE:
(1) PROHIBITING THE DEPOSITING OF ASBESTOS, OR THE ATTEMPTED
DEPOSITING OF ASBESTOS, AT ANY FACILITY OWNED OR OPERATED BY THE
CITY OF BUCKHANNON WASTE COLLECTION BOARD FOR THE COLLECTION,
TRANSFER, OR DISPOSAL OF GENERAL WASTE OR REFUSE; (2)
ESTABLISHING PENALTIES FOR PERSONS VIOLATING THE PROVISIONS OF
THIS ORDINANCE; (3) PROVIDING FOR INELIGIBILITY OF PERSONS CITED OR
FOUND GUILTY FOR A VIOLATION OF THIS ORDINANCE FOR ISSUANCE OF
BUILDING OR DEMOLITION PERMITS OR CONTRACTOR'S LICENSES, and (4)
PROVIDING FOR RESTITUTION PAYABLE TO THE CITY FOR ABATEMENT**

WHEREAS, the Council of the City of Buckhannon recognizes that the asbestoform varieties of Chrysotile (serpentine), crocidolite (ribeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite – those materials commonly known as “Asbestos” represent in certain circumstances a grave threat to individual and public health; and,

WHEREAS, notwithstanding the City’s efforts, certain owners of property within and without the municipal boundaries of the City of Buckhannon have disposed, or have attempted to dispose, of Asbestos materials in the City of Buckhannon’s Transfer Station, conduct that the Council determines to be detrimental and obstructive to the general health, safety, and welfare, of the City’s employees, other customers using the Transfer Station, and individuals and properties in proximity thereto; 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 (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 State of West Virginia recognizes asbestos to be “a dangerous toxic substance and harmful to the citizens of this state”, and has authorized the West Virginia Department of Health and Human Resources, pursuant to West Virginia Code §16-32-1, *et seq.*, and Legislative Rules promulgated thereunder (64 CSR 63), to regulate the abatement of Asbestos and Asbestos-Containing Materials by, in part, restricting the acts of asbestos abatement to professionals licensed under the provisions of said Code and said Legislative Rules; and,

WHEREAS, the United States of America has similarly regulated the use and disposal of asbestos under legislation, including the Clean Air Act (42 U.S.C. §7401, *et seq.*) and the Toxic Substances Control Act (15 U.S.C. §2601, *et seq.*) and regulations promulgated thereunder; 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 and the United States of America and protect the health, safety, and welfare of the residents of and visitors to the City 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 - FINDINGS OF COUNCIL: The Council of the City of Buckhannon hereby makes the following findings:

(A) The asbestoform varieties of Chrysotile (serpentine), crocidolite (ribeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite – those materials commonly known as “Asbestos”, as referred to for all purposes of this Ordinance as “Asbestos”, represent in certain circumstances a grave threat to individual and public health.

(B) The circumstances in which said Asbestos materials constitute the greatest threat to public health the safety occur when said materials are torn down, gathered, and disposed of pursuant to the demolition, repair, remodeling, or refurbishing of a structure in which they had been previously installed.

(C) The disposal, or attempted disposal, of Asbestos materials at the City’s Waste Collection Board’s Transfer Station is a violation of state code, constitutes a public safety hazard and a public nuisance, and results in significant financial expenses to the City of Buckhannon in the abatement thereof.

ARTICLE II - DEFINITIONS:

(A) Asbestos = means 1) the asbestoform varieties of Chrysotile (serpentine), crocidolite (ribeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite, or 2) any material defined as such by state or federal law.

(B) Asbestos-Containing Material = means any material or product which contains more than one percent (1%) asbestos by weight.

(C) Person = Means a natural, common law, or statutory person.

(D) Transfer Station = means the City of Buckhannon's Solid Waste Transfer Station located on Mud Lick Road, off of the Old Weston Road to the west of the municipal boundaries of the City of Buckhannon, and includes any transfer station or facility of similar utility which may hereafter be established and located by the City of Buckhannon.

ARTICLE III – PROHIBITED ACTS: 1) No person shall park, leave, deposit, put aside, or dispose of any Asbestos or Asbestos-Containing Material on the grounds of the City of Buckhannon's Solid Waste Transfer Station, or within any machinery, bin, building, pad, or facility located thereupon. 2) No person shall attempt to park, leave, deposit, put aside, or dispose of any Asbestos or Asbestos-Containing Material on the grounds of the City of Buckhannon's Solid Waste Transfer Station, or within any machinery, bin, building, pad, or facility located thereupon.

ARTICLE IV – 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: Not less than \$250.00 nor more than \$500.00 for the first offense and \$500.00 dollars for each subsequent offense.

ARTICLE V – RESTITUTION TO THE CITY OF BUCKHANNON: 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 pay to the City of Buckhannon, in addition to the fine provided in this Ordinance, restitution in the amount of all costs incurred by the City of Buckhannon in the abatement of the Asbestos unlawfully disposed.

ARTICLE VI – INELIGIBILITY FOR BUILDING PERMITS, SUSPENSION OF PERMITS, AND SUSPENSION OF CONTRACTOR'S LICENSES:

(A) 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 not be granted a building or demolition permit by the City of Buckhannon for a period of one (1) year following the final adjudication of any citation issued under this Ordinance. The Municipal Court may stay the provisions of this section during any period of appeal; however, the provisions of this section shall be tolled during any such period of stay. The City of Buckhannon may deny a building or demolition permit to any person cited for a violation of this Ordinance, pending final adjudication of the citation.

(B) Any building or demolition permit, or any contractor's license, issued to any person cited under this Ordinance shall be deemed suspended as of the time of said citation, pending the final adjudication thereof. Any contractor's license issued by the City to any person found guilty of a violation of this Ordinance following final adjudication thereof shall be suspended for a period of one (1) year following said final adjudication.

ARTICLE VII - 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 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., February 17, 2018.

FIRST READING: January 4, 2018
SECOND READING, PASSAGE AND ADOPTION: January 18, 2018

David W. McCauley, Mayor

CERTIFICATE OF ENACTMENT

I, Susan Aloi, City Recorder, do hereby certify that the foregoing Ordinance No. 423 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular session of the said Council assembled on January 18, 2018.

Susan Aloi, City Recorder