

ORDINANCE NO. 365 OF THE CITY OF BUCKHANNON, AN ORDINANCE:
(1) ESTABLISHING RULES AND REGULATIONS REGARDING THE PROHIBITION
OR LIMITATION OF NOISE WITHIN THE CORPORATE LIMITS OF BUCKHANNON;
(2) ESTABLISHING EXEMPTIONS FOR NOISE; AND (3) MAKING IT A CRIMINAL
OFFENSE TO VIOLATE THE PROVISIONS OF THIS ORDINANCE

WHEREAS, pursuant to the statutory provisions of Chapter 8, Article 12, Section 5, Paragraph 13 of the West Virginia Code, as amended, municipalities are authorized to adopt ordinances preventing injury and annoyance to the public or individuals from anything dangerous, offensive or unwholesome; and,

WHEREAS, further pursuant to the statutory provisions of Chapter 8, Article 12, Section 13, Paragraph 46 of the West Virginia Code, as amended, municipalities are authorized to adopt ordinances to protect and promote the public morals, safety, health, welfare, and good order; and,

WHEREAS, excessive sound and inadequately controlled noise constitute serious hazards to the public safety, health, welfare, and generally impair and negatively impact the community's quality of life; and,

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated; and,

WHEREAS, the citizens of the City of Buckhannon have a right to, and should be ensured of, an environment free from excessive sound; and,

WHEREAS, it is the policy of the City of Buckhannon to protect the health, welfare, safety, and quality of life of its citizens and to promote an environment free from excessive sound; and,

WHEREAS, it is the policy of the City of Buckhannon to prevent excessive sound that may jeopardize the health, welfare or safety of its citizens or degrade the quality of life.

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

ARTICLE I – DECLARATION OF POLICY: This Ordinance is enacted to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens of Buckhannon or degrade the quality of life. It is neither the purpose nor intent of this Ordinance to unduly interfere with the freedoms of speech or religion. This Ordinance shall be known as the City of Buckhannon's Noise Ordinance.

ARTICLE II – DEFINITIONS: The following words and terms when used in this Ordinance shall have the following meanings unless the context clearly otherwise requires:

(A) A-Weighted Sound Level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

(B) City means the jurisdictional limits of the City of Buckhannon, West Virginia.

(C) Decibel, the symbol for which is dB, means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

(D) Dwelling means a residence or abode, including, but not limited to, a house, mobile-home, condominium, apartment or other structure used as a home.

(E) Dynamic braking system means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes, which devices are sometimes referred to as "Jacob's brakes" or "Jake brakes."

(F) Motorboat means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, propelled by an electric, steam, gas, diesel or other fuel propelled or driven by motor, whether or not the motor is the principal source of propulsion, but does not include a boat which has a valid marine document issued by the Bureau of the United States government or any federal agency successor thereto.

(G) Motorcycle means every motor vehicle having a seat or a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding a tractor.

(H) Motor vehicle means any self-propelled vehicle including passenger cars, trucks, truck-trailers, semi-trailers, recreational vehicles, campers and racing vehicles.

(I) Muffler means a properly functioning sound dissipative device or system for abating the sound of escaping gasses on equipment where such a device is part of the normal configuration of the equipment.

(J) Noise means any sound of such character, level or duration: (1) which may be injurious to human health or welfare; or (2) which unreasonably interferes with the

enjoyment of life or property throughout the city or in any portion thereof; or 3) which disturbs the good order or quiet of the community; or 4) which annoys or disturbs a reasonable person of normal sensitivity.

(K) Sound Level Meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output meter and weighting networks used to measure sound pressure levels. Such instrument shall be used for measurement of the intensity of sound and calibrated in decibels as standardized by the American National Standards Institute (ANSI). Readings shall be made on a dB(A) scale.

ARTICLE III – PROHIBITED ACTIVITIES AND EXEMPTIONS: Noise prohibited; generally. Subject to the exceptions contained herein, no person shall make, continue or cause to be made any noise as prohibited herein or alternatively make, continue or cause to be made any noise exceeding the limitations established herein.

(A) Noise prohibited; motor vehicles, motorcycles, motorboats.

(1) All motor vehicles, motorcycles, and motorboats shall be operated as quietly as possible at all times within the city. No person shall operate any motor vehicle, motorcycle or motorboat in such a manner so as to cause unnecessary noise within the city.

(2) No person operating or occupying a motor vehicle on a street or highway shall amplify from within the motor vehicle the sound produced by a radio, tape player, or other mechanical sound-making device or instrument used for entertainment, so that the sound is plainly audible at a distance of 25 feet or more from the motor vehicle.

(3) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for purposes of maintenance, repair, or replacement, any muffler or sound dissipative device on a motor vehicle, motorcycle or motorboat operated within the city.

(4) No person shall operate, or permit the operation within the city of any motor vehicle, motorcycle, or motorboat without factory installed mufflers or their equivalent; provided that if no factory installed or equivalent muffler was present at the time of manufacture of the motor vehicle, motorcycle, or motorboat, then sound emanating from the motor vehicle, motorcycle, or motorboat shall be effectively muffled in a reasonable manner by equipment so constructed and used to muffle sound.

(5) No person shall use a muffler cutout, bypass, or similar device upon any motor vehicle or motorcycle operated within the city.

(6) No person in actual physical control of a motor vehicle within the city shall use a dynamic braking system unless said use is necessary to prevent or avoid an accident that may cause property damage, injury, or loss of life. This provision shall not apply to fire trucks or other emergency vehicles, or any school bus equipped with a dynamic braking system.

(B) Noise prohibited; dwelling.

(1) No person occupying a dwelling within the City shall amplify from within the dwelling the sound produced by a radio, tape player, television or other mechanical sound-making device or instrument used for the purposes of entertainment, so that the sound is plainly audible at a distance of 25 feet or more from the property line of the lot or parcel of land upon which said dwelling is situated.

(C) Exemptions.

(1) The following are exempt from the provisions of this Article:

(a) Noise resulting from emergency or necessary maintenance work as performed by the City of Buckhannon, the State of West Virginia, or the United States of America or any of their political subdivisions, or public utility companies, including, but not limited to, any work of any kind on roads, streets, bridges, alleys, City-owned cemetery, rights-of-way or government owned property;

(b) Noise resulting from any emergency vehicle, when responding to an emergency call or acting in time of emergency, or during training exercises and maintenance, or from any school bus;

(c) Noise from any emergency signaling device;

(d) Noise from a burglar or fire alarm installed on any building, motor vehicle or other property so long as the alarm terminates its operation within five minutes of its activation; provided that it shall be deemed reasonable for an activated alarm to continue to operate if a crime or fire is in progress at or near the property and/or until law enforcement or other emergency personnel have responded to a legitimate call for assistance related in any way to the property at which the activated alarm is located;

(e) Noise from domestic power tools, landscaping and yard maintenance equipment, and agricultural equipment but only when operated between

the hours of 7:00 a.m. and 9:00 p.m. during weekdays, i.e., Mondays through Fridays; and between the hours of 8:00 a.m. and 9:00 p.m. during weekends, i.e., Saturdays and Sundays, and legal holidays. Lawn mower racing is never deemed to be an exempt activity pursuant to the provisions of this ordinance;

(f) Noise from commercial or industrial power tools, landscaping and yard maintenance equipment, and agricultural equipment on a residential property or within 250 feet of a residential property line when operated on commercial or industrial property, between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and between the hours of 8:00 a.m. and 9:00 p.m. on weekends and legal holidays;

(g) Noise from church or chapel bells and chimes when used as part of any religious observance or service or for national celebrations or public holidays, and those bells and chimes that are presently installed and in use, provided said use is reasonable and for a church or West Virginia Wesleyan College related purpose. To avoid any possible misunderstanding the noise emitted from the Upshur County Courthouse bells and West Virginia Wesleyan College's bells and chimes are exempt from the provisions of this ordinance;

(h) Noise generated during the normal course of business by any properly licensed commercial or industrial enterprise operating lawfully within an area properly zoned for said enterprise, unless or until said lawful business use is deemed abandoned as a matter of law or fact pursuant to any other City ordinance;

(i) Noise from construction, drilling, earthmoving, excavating, or demolition activity provided all motorized equipment used in such activity is equipped with functioning mufflers;

(j) Noise from snow blowers, snow throwers, and snow plows when operated with a muffler for the purpose of snow removal;

(k) Noise generated in situations within the jurisdiction of the Federal Occupational Safety and Health Administration;

(l) Noise generated from city sponsored or approved celebrations or events, including, but not limited to parades, outdoor concerts, festivals and athletic events;

(m) Noise generated from any secondary school and higher education sponsored or approved celebrations or events, including but not limited to, outdoor concerts or band festivals and outdoor athletic events and practices;

(n) Noise produced by a governmental body or employee thereof in the performance of any governmental function;

(o) Noise generated from athletic events or practices;

(p) Noise generated from airplanes or other piloted vehicles arriving to or departing from the Buckhannon-Upshur Airport;

(q) Noise generated from railroads operating within the city;

(r) Noise generated during events sponsored by and conducted either at the City's Public Safety Complex or Stockert Youth Center;

(s) Noise generated from fireworks authorized by the City;

(t) Noise generated during events promoted by the Buckhannon Convention and Visitors Bureau; and,

(u) Noise generated during events promoted by West Virginia Wesleyan College upon the College campus, or otherwise as authorized by the City.

(2) For purposes of the exemptions contained in Article III.C.(1)(l) and (m) hereof, all celebrations and events held during the annual West Virginia Strawberry Festival, the fall carnival activities also sponsored by the West Virginia Strawberry Festival, Buckhannon-Upshur High School's annual Homecoming, or any College sanctioned events held upon the campus of West Virginia Wesleyan College shall be presumed to be City sponsored or approved, or secondary school and higher education approved. Buckhannon Convention and Visitors Bureau events are also presumed to be "city sponsored or approved" and are specifically exempt from the foregoing prohibitions. Any list of presumed City sponsored or approved and secondary school and higher education approved celebrations and events listed under this subsection is not intended to be exclusive.

ARTICLE IV – MEASUREMENT, PENALTIES AND ENFORCEMENT:

(A) Any noise that exceeds a noise level of 83 dBA calculated on a distance from the point of generation of the noise source of not less than 25 feet shall be prima facie evidence of a noise prohibited by Article III. Noise resulting in a decibel reading or calculation less than 83 dBA from 25 feet also constitutes a noise prohibited by Article III if such noise otherwise constitutes a prohibited noise activity pursuant to Article III. Furthermore, there is no specific decibel measurement requirement to establish a violation of any noise prohibited by Article III.

(B) Any person found guilty before the Municipal Court of the City of Buckhannon of violating any provision of this Ordinance as defined herein shall be deemed to be guilty of a misdemeanor offense, and shall be punished by a fine as follows: \$100.00 for the first offense within a 24 month period; \$200 dollars for a second offense within a 24-month period; \$300.00 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. If the violation is of a continuing nature, each day during which said violation occurs shall constitute an additional, separate, and distinct offense.

ARTICLE V – FEDERAL LAW AND SEVERABILITY:

(A) The Council of the City of Buckhannon specifically recognizes the existence and application of the federal Noise Pollution and Abatement Act of 1972, popularly known and referred to as the Noise Control Act of 1972, 42 U.S.C. 4901 et seq. The provisions of this Ordinance are intended to supplement the federal law and applicable rules and regulations established therefrom and as are administered by the U.S. Environmental Protection Agency.

(B) 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 nevertheless would have been adopted if such invalid provision or part thereof had not been included herein.

ARTICLE VI - 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 21, 2012.

FIRST READING: June 7, 2012

SECOND READING, PASSAGE & ADOPTION: June 21, 2012

Kenneth T. Davidson, Mayor

CERTIFICATE OF ENACTMENT

I, Richard C. Clemens, City Recorder, do hereby certify that the foregoing Ordinance No. 365 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on June 21, 2012.

Richard C. Clemens, City Recorder