

ORDINANCE NO. 390 OF THE CITY OF BUCKHANNON, AN ORDINANCE
AMENDING ORDINANCE NO. 225 OF THE CITY OF BUCKHANNON, INCREASING
THE CITY'S FIRE PROTECTION SERVICE FEES

WHEREAS, the Council of the City of Buckhannon since March 21, 1966 through the enactment of Ordinances No. 137, 222, and 225 has provided for the imposition and collection of fees for the City's Fire Department providing fire protection services throughout Buckhannon's corporate limits; and,

WHEREAS, the City of Buckhannon is specifically authorized pursuant to Chapter 8, Article 13, Section 13(a) of the West Virginia Code, as amended, to provide emergency fire service protection within the corporate limits of the City of Buckhannon and to impose by ordinance upon the users of the service such reasonable rates, fees, and charges to be collected in the manner specified by ordinance; and,

WHEREAS, the Council heretofore ordered the reconstruction and increase of said fee effective July 1, 2015, and now desires to amend and revise Ordinance No. 225 in accordance with its prior directions.

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 Fire Protection Service Fee Ordinance.

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

(A) The City of Buckhannon has operated a municipal fire department for many decades, however, the City Council has not increased its fire protection service fees in Buckhannon since January 1, 1983.

(B) The City's costs and expenses in providing the reasonable and necessary personnel, training, vehicles, and equipment to offer fire protection service for the community have increased substantially during the past 32 plus years.

(C) Previously, and at all times since January 1, 1983, and beginning with the City's effectuation of Ordinance No. 222, the City's fire protection service fees have been established on a flat rate basis for all residential properties, and on a revenue generated basis for commercial properties.

(D) The City Council now believes that the continuation of the flat rate fire service protection fee approach for all residential properties, and on the revenue generated approach for commercial properties continues to be the fairest and most equitable to the residents and businesses of the City of Buckhannon versus any other fee model.

(E) The express purpose and intention of this ordinance is to substantially increase the total revenues realized by the City of Buckhannon for providing fire protection services within the corporate limits.

ARTICLE III – DEFINITIONS:

For the purposes of this article, the following terms shall have the meaning respectively designated unless it is clear from the context that a different meaning is intended:

(A) “Residential unit structure” means any structure or unit which is used or intended by the nature of its construction to be used as a single-family dwelling by persons for living or sleeping quarters, but shall not include unit structures intended primarily for transient lodging, including without limitation, hotels, motels, rest homes and hospital rooms.

(B) “Dual residential unit structure” means any structure or unit which is used or intended by the nature of its construction to be used as a two (separate) family dwelling by persons for living or sleeping quarters, and having only two units within such structure, but shall not include unit structures intended primarily for transient lodging, including without limitation, hotels, motels, rest homes and hospital rooms. Such structure shall include but not be limited to duplexes.

(C) “Multiple-family residential unit structure” means a residential unit structure having more than two family dwellings or units within such structure. Such structure shall include but not be limited to apartment buildings, condominiums, townhouses or boarding houses. Such structure shall exclude hotels, motels, tourist homes, etc.

(D) “Nonresidential unit structure”. All other buildings not included within the definitions of “residential unit structure”. Such structures shall include, but not be limited to all commercial establishments, schools, government buildings, etc. If a structure has multiple uses such as residential and commercial, it will be classified as a non-residential unit.

(E) “City Administrator” means the duly appointed Buckhannon City Administrator.

(F) “Owner” means the owner of record of any lot, tract, or parcel of real estate within the City of Buckhannon, as evidenced by the records maintained in the Office of the Clerk of the County Commission of Upshur County, West Virginia, but may also include the grantee or transferee of any interest in any real estate situated within the City by unrecorded deed, or by an owner-financed sale evidenced by written agreement, such as a “land contract”, provided that the parties to any such transaction are required to mutually and timely notify the City Administrator as to which party to any such transaction shall be responsible for payment of any fire service fees due and payable pursuant to this Ordinance. In absence of any such agreement, the owner of record pursuant to the County Clerk’s records shall be responsible for payment of the fees and charges established by this Ordinance.

(G) “Buckhannon City Fire Department” means the paid Fire Department of the City of Buckhannon and all firefighters serving as volunteers within said Department.

ARTICLE IV – FEE RATES: The City’s Fire Protection Service Fees shall be charged as follows:

(A) RESIDENTIAL BUILDINGS AND STRUCTURES:

(1) A fee of \$3.00 per month shall be charged against each dwelling house, mobile home, and apartment in the City of Buckhannon, whether occupied or not.

(2) For purposes of this Ordinance, any separate garage, outbuilding, or other structure used as part of any dwelling house, mobile home,

or apartment and not separately occupied or used by persons other than those occupying the primary dwelling house, mobile home, or apartment shall be considered as part of the dwelling house, mobile home, or apartment and shall not subject to any additional charges hereunder.

(3) If any building or other structure is used or commences to become used exclusively for fraternity house, sorority house, dormitory, rooming house, hospital, nursing home, or rest home purposes, then a flat monthly fee of \$50.00 shall be charged to the property owner of record, and each separate building or other structure then shall be charged with the flat monthly fee, whether occupied or not.

(B) COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, AND ALL OTHER NON-RESIDENTIAL BUILDINGS AND STRUCTURES:

(1) A monthly fee based upon annual, gross receipts shall be levied against each occupied office or other business or commercial facility used for business or commercial purposes and against each occupied building or part of an occupied building used solely for one business or commercial purpose, with the fee being determined as follows:

<u>ANNUAL GROSS RECEIPTS</u>	<u>MONTHLY FIRE FEE</u>
\$25,000 and less	\$5.00
\$25,001 to \$50,000	\$7.50
\$50,001 to \$100,000	\$10.00
\$100,001 to \$150,000	\$15.00
\$150,001 to \$200,000	\$20.00
\$200,001 to \$250,000	\$25.00
\$250,001 to \$500,000	\$30.00
\$500,001 to \$1,500,000	\$35.00
\$1,500,001 to \$2,500,000	\$50.00
\$2,500,001 and more	\$75.00

(2) If any commercial building or other structure is or becomes unoccupied, vacant, or abandoned, a flat monthly fee of \$15.00 then shall be charged to the property owner of record.

(3) If any building or other structure is used or commences to become used exclusively for religious, charitable, educational, governmental, or other non-profit

purposes other than those buildings or structures identified in Article IV(A)(3) above, then a flat monthly fee of \$10.00 shall be charged to the property owner of record, and each separate building or other structure shall be charged with the flat monthly fee.

(4) For purposes of this Ordinance, the fees imposed by this Ordinance specifically include any hospital, nursing home, motel, hotel, religious, charitable, educational, governmental or non-profit organization.

(5) The owner of any commercial, industrial, or other non-residential building or structure situated in the City of Buckhannon with a state certified sprinkler system shall receive a monthly twenty-five percent (25%) discount on the charges for the commercial, industrial, or other non-residential building or structure. The burden shall be upon the owner of any commercial, industrial, or other non-residential building or structure to provide documented certification that such building or structure is equipped with a state certified sprinkler system, and until such time as documentation is provided, such building or structure shall not be deemed eligible for the twenty-five percent (25%) discount.

ARTICLE V – MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS:

(A) The service of fire protection shall be continued, maintained and improved by the City of Buckhannon Fire Department and City of Buckhannon Volunteer Fire Department, in part, at the charge and expense of the owners of all residential dwellings and non-residential dwellings included but not limited to commercial and industrial businesses, hospital, nursing home, religious, charitable, educational, governmental or non-profit organizations within the City of Buckhannon which said owners are declared to be users and beneficiaries of such fire protection services. The Fire Protection Service Fee with respect of such users and beneficiaries shall be imposed, assessed and collected as set out in this Ordinance by the City of Buckhannon.

(B) All fees and charges for fire protection services shall be billed and collected by the Treasurer and shall not be pro-rated for less than thirty days.

(C) Charges for the fire protection service shall be billed on a monthly basis as determined and in accordance by the utility billing cycle for each individual property owner or alternatively, the other utility user.

(D) All revenues collected for the collection of the Fire Protection Service Fee shall be dedicated exclusively by the City to defray the cost of the continuance, maintenance, or improvement of fire protection within the City of Buckhannon, and no part of such revenue shall be used for any other purpose whatsoever.

(E) The fees or charges provided for by this Ordinance shall be deemed to be a debt due to the City. The City may collect any such fee or charge and all accrued penalties by action against the owner of property against whom the service charges have been assessed by action instituted before the Magistrate Court or Circuit Court of Upshur County, West Virginia.

(F) It shall be the responsibility of the owner or owners of all buildings and structures within the City to notify the City Administrator of any change in ownership and other items requested by the City Administrator within thirty (30) days of such change.

(G) OWNER PROTESTS: The owner of any such building above aggrieved by a charge or fee for fire protection service may protest the same by giving written notice to the City Administrator or designee thereof setting forth their objections on or before thirty (30) days after the billing date. The City Administrator shall render a decision within a reasonable time, giving notice in writing of the decision to all parties concerned. The amount, if any due the City under such decisions shall be due and payable thirty (30) days after service of the decision. Any person aggrieved by such administrative decision may within thirty (30) days from service of the decision file a petition duly verified with the Circuit Court of Upshur County, West Virginia, requesting review by certiorari, but otherwise, such decision shall be deemed to be final and conclusive.

(H) ADMINISTRATION:

(1) The City Administrator or the City Administrator's duly authorized representative is hereby empowered to make such rules and regulations not in conflict with the provisions of this Ordinance relative to the offering and providing of fire protection services as are necessary to protect the property or the safety or health of the public, and no persons shall fail to comply with any such rule and regulation so promulgated.

(2) The City Administrator shall administer all sections of this Ordinance dealing with financing, billing, collection, etc.

(3) The City Administrator is hereby authorized to adjust, settle or cancel any charge or fee required or made under this Ordinance or any controversy which may arise in the administration of this article. However, such exercise of authority by the City Administrator shall be in a uniform manner, and not exercised in an arbitrary or capricious manner and a written or electronic record shall be kept of any and all such adjustments, settlements or cancellations.

ARTICLE VI - Penalty for Non-Payment of Fire Protection Service Fee:

(A) It shall be unlawful for any person to refuse to pay the Fire Protection Service Fee provided for herein. It shall be each user's responsibility to pay any and all reasonable court costs and fees, for the collection of delinquent accounts.

(B) Delinquent Charges Penalty. Any charge for service remaining unpaid after the billing date of the utility bill shall be deemed delinquent and a late payment penalty of ten percent (10%) of the unpaid charge for that billing shall be assessed. In the event that any such delinquent charge remains unpaid for a reasonable period of time not exceeding six months, the delinquent fee shall be pursued through a civil action instituted before either the Upshur County Magistrate Court or Circuit Court as may be appropriate under the circumstances.

(C) Pursuant to Chapter 8, Article 13, Section 13 of the West Virginia Code as amended, and to facilitate collection of any unpaid and delinquent fire protection service fees due under this Ordinance, the City of Buckhannon shall be hereby authorized to file a lien in the Office of the Clerk of the County Commission of Upshur County, West Virginia, upon real property after providing written notice to the property owner, return receipt requested, that the City intends to file the lien unless the delinquency is paid by a specified date set forth in the notice, and which lien shall be filed not less than ninety (90) days from the date the notice is mailed by the City. The property owner shall have the right to appeal the City's notice to the Upshur County Circuit Court, which appeal must be filed before the date provided for in the notice.

(D) Any person whomsoever who fraudulently files information required pursuant to this Ordinance, for which no other penalty is provided, shall upon conviction in the City of Buckhannon Municipal Court be guilty of a misdemeanor offense, and shall be fined not more than Five Hundred Dollars (\$500).

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 that are not specifically determined to be unconstitutional or invalid.

ARTICLE VIII - EFFECTIVE DATE: This Ordinance shall be deemed effective beginning July 1, 2015.

FIRST READING: May 7, 2015

SECOND READING, PASSAGE AND ADOPTION: May 21, 2015

Richard W. Edwards, Mayor

CERTIFICATE OF ENACTMENT

I, Amberle Jenkins, Assistant City Recorder, do hereby certify that the foregoing Ordinance No. 390 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular session of the said Council assembled on May 21, 2015.

Amberle Jenkins, Assistant City Recorder