

TOWN HALL MEETING- DISCUSSION PROPOSED DRUG HOUSE ORDINANCE

A public forum was held October 2, 2018 at the Public Safety Complex located at Two Friendly Way, opened at 7:00pm.

The following were present:

Mayor	David McCauley	Present
Council Member	CJ Rylands	Present
Council Member	Pamela Cuppari	Present
Council Member	Robbie Skinner	Present
Council Member	David Thomas	Present
City Attorney	Tom O’Neill	Present
Chief of Police	Matt Gregory	Present
Fire Chief	JB Kimble	Present
City Engineer	Jay Hollen	Present
Housing Enforcement Officer	Vincent Smith	Present
Information and Grant writer	Callie Cronin Sams	Present
Assistant Recorder	Amberle Jenkins	Present
Record Delta Newspaper	Amanda Hayes	Present
MyBuckhannon.com	Katie Kuba	Present

Also in attendance: Daniel L Tenney, Carolyn S Tenney, Randy Sanders, Sandy Kesling, Christine Bennett, Matt Kerner, Sharla Smith, John Johnson, Helen Summers, Mary Dean, Dale & Robynn Shannon, Kristie Tenney, Karen Bennett, Jody Light, Doug Spears & Mary Thorp.

Meeting Notice Posted 09/21/18

***Special Town Hall Meeting Notice of the City Council of Buckhannon
Discussion RE: Proposed Drug House Ordinance
Tuesday, October 2, 2018 7:00PM at the Public Safety Complex Training Room located at
Two Friendly Way***

***CITIZENS ARE ENCOURAGED TO ATTEND & CONTRIBUTE INPUT REGARDING THE DISCUSSION
ON THE PROPOSED ORDINANCE PROVIDING FOR THE ABATEMENT OF DRUG HOUSES, ETC.***

POSTED 09/21/18

Mayor McCauley stated that the purpose of the forum was to discuss the draft of Ordinance 428 which would regulate property that would be considered a nuisance property if certain activities were conducted on the premises.

Police Chief-Matt Gregory began by explaining how the ordinance came about. The drug epidemic has become much more prevalent in the last decade and has evolved in severity and scope and has no cultural or class boundaries in the people it affects.

The police and fire department personnel were the most recent requests to develop another tool to use in the fight. Chief Gregory gave a couple examples of incidents in which police and fire have had to go on emergency calls multiple times at one location.

Chief Gregory explained the “broken window theory”. If no one cares about what is happening it will escalate. Martinsburg developed a “drug house” ordinance that has been in effect for about two years. Chief of Martinsburg brought the concept to Martinsburg. He was once a police officer in Chicago and saw the results of not taking action. He has been very pleased with the positive impact from the ordinance. No one has been fined at this time. The Martinsburg ordinance was used as a template for the draft. Cities often share ordinances that have been successful.

The drug issue is not just a police issue. Everyone must work together (police, neighbors, landlords, community).

City Attorney-O'Neil commented that the "broken window" theory is accurate. He recounted living in a larger community 25 years ago in New Jersey and experience the same negative impact. Nuisance properties can be corrected with the right tools.

Attorney -O'Neil explained the following draft ordinance in detail

ORDINANCE NO. 428 OF THE CITY OF BUCKHANNON, AN ORDINANCE
PROVIDING FOR THE ABATEMENT OF DRUG AND GANG HOUSES, HOUSES OF PROSTITUTION, AND
OTHER DISORDERLY HOUSES WITHIN THE MUNICIPAL
BOUNDARIES OF THE CITY OF BUCKHANNON

WHEREAS, the scourge of drug abuse which has ravaged our country and our state, and has not left the City of Buckhannon untouched; and,

WHEREAS, other criminal behavior, often but not always connected with the use of illegal narcotics and other illegal psychoactive substances, presents clear and present dangers to the citizens of the City of Buckhannon and the City's first responders within the Police Department and Fire Department; 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(23) further empowers the City of Buckhannon to enact ordinances to "provide for the elimination of hazards to public health and public safety and to abate or cause to be abated anything which . . . is a public nuisance"; and,

WHEREAS, West Virginia Code § 8-12-5(44) further empowers the City of Buckhannon to "protect and promote the public morals, safety, health, welfare and good order" of the City; and,

WHEREAS, West Virginia Code § 8-12-5(58) further empowers the City of Buckhannon to provide penalties for offenses and violations of laws duly enacted by the governing body of the City; and,

WHEREAS, when citizens reside in close proximity to each other, as within the bounds of a municipality such as the City of Buckhannon, the increased population density relative to areas of a more rural, forested, or agricultural character of necessity alters the social compact underpinning the foundation of our polity with respect to private property rights, especially when certain private real property is regularly used in, or is the frequent scene of, criminal or illicit activity; and,

WHEREAS, the City of Buckhannon wishes in all respects to enhance the quality of life for all citizens, protect the general public from criminal activity and its effects, abate public nuisances, regulate land use in a matter to protect property values of neighboring properties, protect the reciprocal property rights of neighboring property owners, and reduce or eliminate the hazards to the public welfare that arise from properties used for criminal activity.

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

Article I – CERTAIN PROPERTIES DECLARED A PUBLIC NUISANCE:

(a) Any premises used for prostitution; illegal possession, storage, or delivery of or trafficking in controlled substances; or other illegal drug activity is hereby declared to be a public nuisance; *Provided*, that no public nuisance or violation of this Ordinance shall be deemed to exist unless 1) the premises is used for two or more such offenses or incidents within a twenty-four consecutive month period, 2) the activity committed on the premises is punishable by imprisonment for one year or more under the Code of West Virginia, 1931, as amended, or 3) the following offenses defined in West Virginia Code are committed, in whole or in part, on the premises: manufacture of a controlled substance, possession of a controlled substance with intent to deliver, or delivery of a controlled substance. The

provisions of this Ordinance shall not shall not be deemed to be applicable to any hospital, clinic, or residential drug treatment facility that is either licensed, certified, or otherwise subject to supervision or inspection by the State of West Virginia.

(b) Any person who owns, manages or controls any premises and who 1) encourages or permits an illegal activity described in subsection (a) to occur or continue on such premises; or 2) fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to Article II of this Ordinance, or subsequently agreed to, or other abatement measures which successfully abate the nuisance within the 30 - day period following the notice, or within any other agreed upon period, shall be guilty of a misdemeanor as provided in Article II of this Ordinance and subject to a fine according to the schedule set forth in Article III of this Ordinance.

Article II – ORDER OF ABATEMENT

(a) The Chief of Police, City Engineer, Zoning Enforcement Officer, or representative of the City as authorized by the City's Housing Enforcement Board, may bring an action to abate a public nuisance described by this section in the City's Municipal Court by filing a complaint therein. Such complaint shall identify with specificity the premises alleged to be a public nuisance, the activity occurring thereupon which constitutes a violation under Article I of this Ordinance, and the frequency with which said activity has occurred upon the premises. Upon the filing of a complaint, the Municipal Court shall serve written notice of process upon each owner of the premises, their tenants or any residents of the premises if known, and shall post a conspicuous notice on the front door of any dwelling located upon the premises that a complaint has been filed pursuant to this Ordinance, and identifying the date and time of any hearing on the complaint scheduled by the Municipal Court. For purposes of service of process, compliance with the requirements of this section shall establish sufficient notice for the Municipal Court to hear the complaint and render an order of liability under this Ordinance. The Municipal Court shall deem the premises a Public Nuisance if the complaining officer establishes by a preponderance of the evidence that the premises was used in the commission of those activities set forth in Article I of this Ordinance.

(b) The Chief of Police, City Engineer, Zoning Enforcement Officer, or representative of the City as authorized by the City's Housing Enforcement Board, shall issue an order of abatement upon a finding by the City's Municipal Court of liability under this Ordinance.

(c) The order of abatement shall require the defendant to take measures reasonably calculated to prevent the recurrence of the illegal activity.

(d) The Municipal Court may issue a search warrant to the Chief of Police, City Engineer, Zoning Enforcement Officer, or representative of the City as authorized by the City's Housing Enforcement Board to ensure compliance with the order of abatement or any other order of the Municipal Court issued pursuant to this Ordinance.

(e) If any person in control of any premises deemed a Public Nuisance under this Ordinance, to whom an order of abatement is issued under this Ordinance, fails to implement the directives of the order of abatement within thirty (30) days of its issuance, that person is guilty of a misdemeanor, and is subject to the penalty established in Article III of this Ordinance.

(f) Any person in control of any premises deemed a Public Nuisance under this Ordinance, whereupon any person, engages in prostitution; illegal possession, storage, or delivery of or trafficking in controlled substances; other illegal drug activity; manufacture of a controlled substance; possession of a controlled substance with intent to deliver; or delivery of a controlled substance is guilty of a misdemeanor if he or she knew, or was willfully blind to, such offenses being committed on the premises, and is subject to the penalty established in Article III of this Ordinance.

Article III – PENALTY

(a) Each day that a violation of this Ordinance continues shall be considered a separate and distinct offense.

i. No person shall be found in violation this Ordinance under section (e) of Article II hereof unless the abatement measures ordered under Article II of this Ordinance were reasonable and warranted, and that the defendant knowingly failed to implement them.

ii. A person may be found in violation of this Ordinance under section (f) of Article II hereof regardless of whether an Order of Abatement is issued under this Ordinance.

(b) Upon a finding of liability under this ordinance, the defendant shall be fined not less than \$100.00 and not more than \$1,000.00 per offense.

(c) Any fine imposed under this Ordinance shall be considered a lien upon the premises determined to be a Public Nuisance under this Ordinance, and the City shall cause to be recorded in the office of the Clerk of the County Commission of Upshur County, West Virginia a Notice of Lien if any fine imposed under this Ordinance is not paid under such terms established by the City’s Municipal Court.

Article IV – 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 V - EFFECTIVE DATE:

This Ordinance shall be deemed effective January 1, 2019.

FIRST READING: October 4, 2018

SECOND READING, PASSAGE AND ADOPTION: October 18, 2018

David W. McCauley, Mayor

CERTIFICATE OF ENACTMENT

I, Colin Reger, City Recorder, do hereby certify that the foregoing Ordinance No. 428 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on October 18, 2018.

Colin Reger, City Recorder

This ordinance labels property, not people. There are a series of incidents that must take place in order to identify the nuisance property. It imposes reasonable requirement to abate the property. It imposes and requires reasonable accountability.

Properties are declared public nuisance as described in Article 2.

Discussion regarding the three areas of identifying the property. Residents recommended that all three things have to happen instead of one or the other.

Proceedings to notify of hearing involve the owner, occupant and property posted.

Attorney O’Neill recognized guests that signed up to make comments.

There were several questions and scenarios discussed. One main topic was concern on process to evict persons that have violated the three identifying factors. Magistrates hear these cases and sometimes it takes months to have persons removed.

This is a sample of some of the questions.

Randy Sanders

- Was concerned about some of the wording in article 3. *Answer: Addressed and to be corrected.*
- Concerned about eviction process. *Answer: Attorney states ordinance is law and should be recognized as such.*
- What is the end result? *Answer: Martinsburg experience 91% reduction in recurring issues.*

Christine Bennett:

- Questioned some wording and asked for clarification.
- Are college properties included? *Answer: Yes*
- Are minors included? Yes
- It often takes months to evict.
- She gave scenarios.
- Would like everyone to look at big picture not a bandage.
- Feels it may be creating a stumbling block for those in recovery.
- Matt Kerner
- Illegal possession in verbiage. Is it targeting simple possession.?
- His facility receives persons in recovery. Perhaps recovery and detox facilities should be exempt.
- Wording should be drafted to protect future interpretations.

Sharla Smith

- Why don't we create our own policies and always compare to other communities? We also have homelessness. Feels this will increase homeless and discrimination.
- Helen Summers
Concerned about protection if complaint is filed against landlord in court for wrongful eviction.

Jody Light

- Wants to see all three identifiers together not singularly.
- Questioned some wording and clarification.
- Was also concerned about eviction process.
- Is there a way to get information as a landlord?
- Can landlord be notified?
- May be some discrimination. For instance, several persons listed in paper recently. This would pertain to future issue on property, not past history of person.
- She read an article from the Martinsburg newspaper Sept 11, 2018.

Terry Mills

- Questioned if an incident occurs in a house then property sold. Would first incident count on property toward 2nd owner. Yes
- He expresses concerns that records are not easily accessible or available to obtain this information if you are new to the area.

Throughout the meeting, staff and residents exchanged several scenarios. Landlords understand but had concerns about the process and how to handle eviction process legally. They wish magistrates would have attended the meeting.

The ordinance will be corrected for wording and presented during the next Council meeting.

Meeting adjourned at 8:57 pm.

Mayor David McCauley

Assistant Recorder Amberle Jenkins
