

**ORDINANCE NO. 428 OF THE CITY OF BUCKHANNON, AN ORDINANCE  
PROVIDING FOR THE ABATEMENT OF PREMISES DEEMED PUBLIC NUISANCES  
WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF BUCKHANNON**

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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 drug 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 manner 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 the illegal felony possession, storage, or delivery of or trafficking in controlled substances is hereby declared to be a public nuisance; *Provided*, that a public nuisance or violation of this Ordinance shall be deemed to exist when 1) any of 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, delivery of a controlled substance, any felony offense established in West Virginia Code §61-2-10b committed while under the influence of a controlled substance, any felony offense established under West Virginia Code Chapter 60A while in possession of a firearm, or any felonious assault or battery – whether with or without a deadly weapon – committed while under the influence of an illegal substance, and 2) the premises is used for two or more such offenses or incidents within a twenty-four consecutive month period. The provisions of this Ordinance 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 fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to Article II of this Ordinance 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.

(c) Upon the commission of any act specified in subsection (a) of this Article, the City will notify the owner of the premises upon which the act or acts were committed, in writing, that an act triggering potential designation of the premises as a public nuisance occurred on the premises.

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) Upon a finding by the Municipal Court that the premises is a Public Nuisance under this Ordinance, the Municipal Court shall issue an Order of Abatement requiring the defendants to take measures reasonably calculated to prevent the recurrence of the illegal activity.

(c) 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.

(d) 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.

(e) Any person in control of any premises whereupon any person engages in manufacture of a controlled substance, possession of a controlled substance with intent to deliver, delivery of a controlled substance, any felony offense established in West Virginia Code §61-2-10b committed while under the influence of a controlled substance, or any felony offense established under West Virginia Code Chapter 60A while in possession of a firearm is guilty of a misdemeanor if he or she knew or was willfully ignorant of such offenses being committed on the premises and took no action to prevent or abate such activity, or participated in such activity, 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 18, 2018

SECOND READING, PASSAGE AND ADOPTION: November 1, 2018

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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 November 1, 2018.

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Colin Reger, City Recorder