

ORDINANCE NO. 466 OF THE CITY OF BUCKHANNON: AN ORDINANCE AMENDING ORDINANCE NOS. 244, 357, 367, 375, AND 404 (CODIFIED ORDINANCE NO. 2016-004) OF THE CITY OF BUCKHANNON, AND MODIFYING AND RE-ENACTING ARTICLE 1711 OF THE CODIFIED ORDINANCES OF THE CITY OF BUCKHANNON RELATED TO EXPEDITED ENFORCMENT OF THOSE ORDINANCES CONCERNING THE ABATEMENT OF NUISANCES ON PROPERTIES LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY.

WHEREAS, the Council of the City of Buckhannon historically has been progressive and proactive in promoting the general health, safety, welfare, and positive appearance and aesthetic appeal of the Buckhannon community through enactment of several ordinances including but not limited to Buckhannon's comprehensive zoning, housing enforcement, and abandoned and junked car ordinances; and,

WHEREAS, notwithstanding the City's efforts, certain residential, property owners have continued to engage in activities and conduct that the Council determines to be detrimental and obstructive to the general health, safety, welfare, and positive appearance and aesthetic appeal of their neighborhoods, and further depreciating the value of surrounding properties; and,

WHEREAS, those activities and conduct that the City Council deems to be detrimental and obstructive to the general health, safety, welfare, and positive appearance and aesthetic appeal of residential neighborhoods, and further depreciative of the value of property include- the storage, collection, parking, leaving, depositing, maintaining, reserving, putting aside for future use, permitting, or allowing to remain on any porch, balcony, roof, patio or yard, other than in a completely enclosed building or structure certain materials including but not limited to junk, rubbish, clutter, litter, debris, lumber and other building materials, and further upholstered furniture, mattresses,

materials and other similar products not normally intended, designed, built or manufactured for outside use; and,

WHEREAS, the Council of the City of Buckhannon finds that expedited enforcements of its ordinances prohibiting certain practices on properties located within the corporate limits of the municipality is required to promote the general welfare of the community and accomplish the purposes of those ordinances; 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 (15) of the West Virginia Code, grants plenary power and authority unto the City of Buckhannon's governing body to make regulations guarding against danger or damage by fire; 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 Council of the City of Buckhannon desires in all respects to fully comply with the statutes of the State of West Virginia 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:

The Codified Ordinances of the City of Buckhannon are hereby amended and reenacted as follows:

1711.02 – ADMINISTRATIVE PROVISIONS:

(A) The purpose of this Article is to provide additional and alternative methods and processes to enforce City ordinances addressing zoning, housing enforcement, sanitation, and common nuisances related to real estate situated within the City of Buckhannon in a fair, speedy, and inexpensive manner, and to improve compliance with such provisions. This Article shall be in addition to those methods and processes otherwise contained in other ordinances of the City of Buckhannon, West Virginia, and shall be applied in the discretion of the enforcement official enforcing the provisions of this Article.

(B) This Article shall apply to and supplement any and all of the zoning, housing enforcement, sanitation, and common nuisance violations referenced in any City ordinance, including but not limited to the following Ordinances of the City of Buckhannon:

- (1) Ordinance No. 244 (Zoning Ordinance);
- (2) Ordinance No. 357 (Abandoned & Junk Car Ordinance);
- (3) Ordinance No. 367 (Housing Enforcement Ordinance);
- (4) Ordinance No. 375 (Junk Storage Ordinance)- and,
- (5) Ordinance No. 404 (Codified Ordinance 2016-004).

(C) Any municipal law enforcement officer, as well as the City's Zoning & Housing Enforcement Officer, shall have authority to enforce the provisions of this Ordinance and is referred to herein as an "enforcement official."

(D) Upon receipt of information or observation of circumstances that the likelihood of a violation of any provision of any ordinance of the City of Buckhannon respecting sanitation or common nuisance, an enforcement official may investigate the facts and, to the extent permitted by law, make an inspection of the premises.

(E) If any enforcement official determines that an ordinance violation exists and determines to utilize this enforcement section, the enforcement official shall issue a citation to the person having either ownership or control of any land, building, structure, sign, property, licensed or permitted business or operation which is in violation, and shall order that violation be corrected by personal or substituted service of process in accordance with the West Virginia Rules of Civil Procedure, by either delivering the citation to the person in violation personally to a member of that person's immediate family who is above the age of 16 years and by advising that person of the purpose of the notice.

Return of service shall be made at the time of service by the process server effecting service. If personal or substituted service cannot be effectuated or is impractical, the enforcement official may deliver the citation to the person by certified mail, return receipt requested, to the person's last known address.

(G) The citation shall be in writing and shall contain the following information:

- (1) the date of issuance of the citation;
- (2) the name and address of the person(s) charged with the violation(s);
- (3) the section of the ordinance(s) violated;
- (4) If it is a repeat violation, the date the citation was issued within the previous one-year period for a violation of the same section;
- (5) the nature of the violation;
- (6) the place and time the violation occurred;
- (7) if it is not a repeat violation, the date the notice of violation was given;
- (8) the amount of the fine imposed for the violation;
- (9) the name, address, and telephone number of the enforcement official issuing the citation;
- (10) the name, address, and telephone number of the office where the fine must be paid;
- (11) a notice that the fine must be paid within ten (10) business days of the service of the citation, together with a warning that the failure to pay when due any fine results in the increase of such a fine by \$100; and,

(12) the name, address, and telephone number of the municipal court
where citations may be contested.

(13) the time period allowed for the violation to be corrected: provided, that
no such time period for correction shall be less than forty-eight hours;

(H) Any person issued a citation pursuant to this section may be punished by a
fine as follows: within any one-year period, \$100 for the first citation, \$300 for the second
citation, and \$500 for the third citation and each citation thereafter.

(I) All fines imposed by citations under this section shall be due to the municipal
court and paid in full within ten (10) business days of the service of the citation unless a
hearing before the municipal court is requested. The failure to pay when due any fine
imposed under this section shall constitute a failure to appear or otherwise respond under
West Virginia Code 8-10-2b and may result in the issuance of a warrant and notification
to the West Virginia Division of Motor Vehicles. The failure to pay when due any fine
imposed under this section shall increase such a fine by \$100.

(J) Any person contesting such citation may, within forty-eight (48) hours of service
of such citation, request a hearing on the citation, with the municipal court clerk or
municipal court clerk deputy in accordance with the following:

(1) Upon requesting a hearing with a municipal court clerk, the clerk or their
deputy shall place the case on the municipal court docket, set the case for hearing within
ten (10) days from the date of the request for hearing, provide a notice of hearing to the
recipient of the citation, and forward a copy of the notice of hearing to both the
enforcement official who issued the citation and the City Attorney. Upon receipt of the
Notice of Hearing, the enforcement official shall cause a copy of the citation to be

forwarded to the City Attorney and the municipal court clerk who shall file it as the original complaint alleging the violation(s) indicated therein.

(2) The municipal court shall treat the citation itself as the original complaint before the court. Anyone found guilty of the charges contained in the citation shall be fined in accordance with the fines outlined above. If the court finds in favor of the recipient of the citation, the charges shall be dismissed.

(L) In the event the enforcement official shall be unable to deliver the citation within a reasonable period of time considering the circumstances of the violation, or if the person to whom the citation is delivered remains unwilling or unable to abate the conditions giving rise to the citation following the enforcement actions provided in this section, the City may abate the violations, assess the costs thereof, and collect those costs from the owner of the property. If the owner of the property does not reimburse the costs of abatement to the City, or does not reach a reimbursement agreement with the City within 30 days of the City's determination of the costs of abatement, the City may file a lien against the owner of the property in the Office of the Clerk of the County Commission of Upshur County for the costs of the abatement. Such lien may also be filed for any outstanding amount payable to the City should the property owner fail to fulfill its obligations under such an agreement.

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., April 20, 2024.

FIRST READING:

March 5, 2024

SECOND READING, PASSAGE AND ADOPTION:

March 21, 2024

Robert N. Skinner, III, Mayor

CERTIFICATE OF ENACTMENT

I, Randall H. Sanders, City Recorder, do hereby certify that the foregoing Ordinance No. 466 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on March 21, 2024.

Randall H. Sanders, City Recorder