

ORDINANCE NO. 2016-19

**AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING CHAPTER 22, ARTICLE X, SECTIONS 22-232 THROUGH 22-251, HISTORIC PRESERVATION; PROVIDING FOR THE ADMINISTRATION OF A HISTORIC PRESERVATION PROGRAM; PROVIDING FOR THE DESIGNATION OF HISTORIC DISTRICTS AND LANDMARKS; AND PROVIDING FOR CERTAIN RELATED MATTERS.**

**WHEREAS**, the City of Burnet is authorized by the general laws of the State of Texas, including but not limited to Ch.211, Tex. Loc. Gov't. Code, the Municipal Zoning Authority, specifically authorizes zoning functions and procedures for municipalities; and

**WHEREAS**, the City of Burnet is authorized by the general laws of the State of Texas, including but not limited to Ch. 211, Tex. Loc. Gov't. Code, Section 211.005, authorizing the governing body of a municipality to divide the municipality into districts, within which the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land and within which zoning regulation must be uniform for each class or kind of building in a district; however, zoning regulations may vary from district to district.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:**

**Section 1. Findings:** The preceding recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Amendment of Ordinance.** The City of Burnet Code of Ordinances, Chapter 22, Article X, Sections 22-232 through 22-251 shall be amended in their entirety as follows:

**Division 1. Establishment, Goals, Purpose and Funding.**

**Sec. 22-232. Historic Preservation Program Established:** The development and promotion of historic preservation is hereby established as a program and function of the City of Burnet, Texas. The name of the organization and program is the "City of Burnet Historic Board".

**Sec. 22-233. Goals and Purposes:** The City Council of the City of Burnet hereby declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks and a district of historical and cultural importance and significance is necessary to promote the economic, cultural, educational and general welfare of the public. It is recognized that areas of the city, including but not limited to the historic downtown area, represents the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant

historic, architectural, and cultural resources that constitute their heritage. This section is intended to:

- (a) Protect and enhance the landmarks and districts which represent distinctive elements of Burnet's historic, architectural, and cultural heritage;
- (b) Foster civic pride in the accomplishments of the past;
- (c) Protect and enhance the city of Burnet's attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (d) Ensure the harmonious, orderly, and efficient growth and development of the city;
- (e) Promote economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the city;
- (f) Encourage stabilization, restoration, and improvements of such properties and their values.

**Sec. 22-234. Funding.** The City of Burnet may provide funding to the Board as approved by the City Council.

## **Division 2. Board of Directors.**

### **Sec. 22-235. Establishment, Composition and Officers.**

- (a) There is hereby established a Historic Preservation Board of Directors (the "Board").
- (b) The Board shall consist of five members; one of which shall be a member of the City of Burnet staff, one shall be a member of the City Council or a City staff member appointed in their stead, and three at-large members. The at-large members shall be appointed by the City Council. For the initial terms, two at-large directors shall serve two year terms and one shall serve a one-year term after which all terms for at-large members shall be two years. In the event a director leaves prior to the expiration of his/her term, the City Council shall appoint a director to fill the unexpired term.
- (c) All at-large Board members shall have a known and demonstrated interest or knowledge in historic preservation.
- (d) Officers of the Board shall be the President, Vice-President and Secretary and shall be elected by and from the members of the Board annually.
- (e) The Board shall be subject to the City of Burnet Code of Ethics.
- (f) The Board shall meet at least monthly, if business is at hand. Special meetings may be called at any time by the President, City staff member, or on the written request of any two Board members.

- (g) A quorum of the Board is required for the transaction of business and shall consist of not less than a majority of the currently sitting membership of the Board.
- (h) The President shall be the Executive Officer for the Board. He/she shall preside at board meetings and, with the approval of the Board, appoint committees, task forces, and chairmen; act as a liaison to the Code Enforcement Office, Planning and Zoning Commission and/or the City Council as needed to do the business of the Board; serve on Board committees as requested by the Board and deemed appropriate; sign official documents on behalf of the Board; and perform other such duties as may pertain to the office. The President shall submit an annual activity and progress report to the City Council.
- (i) The Vice-President shall preside at all meetings in the case of the absence of the President; he/she shall possess all of the duties and responsibilities of the President in the event of absence, resignation or death of the President.
- (j) The Secretary shall record the minutes of all the meetings; assist the President in arrangement and notification of meetings, necessary correspondence and reports; where required, co-sign with the President where required, any contracts or instruments designated by the Board as pertaining to the business of the Board; perform any other duties normally pertaining to the office as requested by the Board.
- (k) Committee chairmen shall lead their committee members in the execution of those tasks assigned to them by the Board as they pertain to the business of the Board.
- (l) No person may be appointed to the Board who is related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood) to any other member of Board or City Council. In the event that City Council adopts nepotism rules generally applicable to boards and commissions the Board shall comply with either this subsection or such general nepotism rules whichever is stricter.
- (m) All Board meetings shall comply with the Texas Open Meetings Act.

**Sec. 22-236. Duties, functions and jurisdiction.** The Board's duties functions and jurisdiction shall be determined by City Council and shall include the following:

- (a) Recommend to the City Council, criteria for the designation of historical, architectural, and cultural landmarks and delineation of Historic District(s) of the city of Burnet.
- (b) Conduct survey's and maintain an inventory of significant historic, architectural, and cultural landmarks and all properties located in Historic Districts within the city.

- (c) Recommend to City Council, the designation of landmarks and Historic Districts.
- (d) Create committees from among its membership to carry out the purposes of this ordinance.
- (e) Maintain written minutes which record all actions taken by the Board.
- (f) Recommend to City Council, the conferral of recognition upon the owners of landmarks or properties within Historic Districts by means of certificates, plaques and/or markers.
- (g) Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
- (h) Make recommendations to the City Council concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and Historic Districts within the City.
- (i) Review applications for Certificates of Appropriateness as provided for herein.
- (j) Prepare and submit a report summarizing the work completed as requested by the City and/or City Council.
- (k) Recommend specific guidelines that, upon approval by City Council, shall be the basis for the review of landmarks and districts.
- (l) With prior approval of the City Council, research and report on the possible acquisition of landmark structures by the City where its preservation is essential to the purpose of this ordinance and/or where private preservation is not feasible.
- (m) Upon direction by the City Council, review offers of the donation of preservation easements and development rights for the purpose of historic preservation, for consideration by the City Council of the City of Burnet.

**Division 4. Designation of Historic Districts and Landmarks.**

**Sec. 22-237. Designation of Historic Landmarks and Historic Districts, generally.**

- (a) The Designation of a Historic District or Landmark is a change of zoning classification, which, in addition to the requirements of this division, shall comply with applicable provisions of Chapter 118 of this Code and Chapter 211 of the Texas Local Government as stated in subsection (e) and (f) below.
- (b) The agenda, for any Board meeting where the designation of a Historic District or Landmark shall be considered, shall include an agenda item describing the matter that will be considered, in accordance with the Texas Open Meetings Act.

- (c) At any hearing on the proposed designation of a Historic District or Landmark the owners of properties, subject to the proposed designation, City staff, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed Historic Landmark.
- (d) At the conclusion of a hearing on the proposed designation of a Historic District or Landmark, the Board shall make a recommendation to the Planning and Zoning Commission in favor or opposed to the proposed designation.
- (e) Upon receipt of the recommendation, the Planning and Zoning Commission shall proceed with consideration of the proposed designation as a zoning case and in compliance with Chapter 118 of this Code and Chapter 211 of the Texas Local Government.
- (f) Upon receipt of a report from the Planning and Zoning Commission, the City Council may take final action on the proposed designation by consideration of an ordinance after publication of notice and public hearing as required by Chapter 118 of this Code and Chapter 211 of the Texas Local Government.

**Sec. 22-238. Designation of Historic Landmarks outside a Historic District.**

- (a) No property shall be considered by the Board for designation as a Historic Landmark without the consent of the property owner(s) unless otherwise directed by the City Council of the City of Burnet. For purposes of this ordinance "Property" shall mean any building, site, structure, or object that is deemed to meet the criteria for historical designation as provided for herein.

**Sec. 22-239. Designation of Historic Landmarks within a Historic District.**

- (a) Any Property located within a City designated Historic District shall be eligible for designation as a Historic Landmark if it meets the criteria for Historic Landmark designation as provided for herein.

**Sec. 22-240. Designation of Historic Districts**

- (a) These provisions pertaining to the designation of a Historic District constitute a part of the City of Burnet Code of Ordinances.
- (b) The Board may not take under consideration the historic designation of any area or district without the consent of the City Council of the City of Burnet, which shall be memorialized by resolution or minute order considered and acted on in open session.

**Sec. 22-241. Criteria for Designation of Historic Landmarks and Districts** In order for a Property to be designated a Historic Landmark or an area or district to be designated a Historic District the City Council, after consideration of the recommendations of the Board and Planning and Zoning Commission, shall proceed as follows:

- (a) City Council must find that a Property, area or district meets one or more of the criteria:
  - a. Possesses significance in history, architecture, archeology, and culture, or
  - b. Is associated with events that have made a significant contribution to local, regional, state, or national history; or
  - c. Embodies the distinctive characteristics of a type, period, or method of construction, or section of the city; or
  - d. Represents the work of a master designer, builder, or craftsman; or
  - e. Represents a significant, established and familiar visual feature of the city
  
- (b) City Council may reject a Property for historic designation if it makes one or more of the findings that follows:
  - a. The structure is in such condition that it is not a viable candidate for restoration; or
  - b. Materials or craftsmen are no longer available or are prohibitive in cost, or
  - c. The Property cannot be adapted for any other use, whether by the current owner or by a purchaser; or
  - d. Efforts to find a purchaser interested in acquiring the Property and preserving it have failed; or
  - e. Peculiar and unusual circumstances would prevent the reasonable use of the Property; or
  - f. The historic qualities or character of the Property cannot be ascertained or are not historically appropriate with the character of the Historic District and/or other Properties in its proximity.

**Sec. 22-242. Certificate of Appropriateness for Alteration or New Construction Affecting Landmarks or Historic Districts and Sign Permits. –**

- (a) Exterior alteration. Unless otherwise provided for herein, no person shall carry out any construction, reconstruction, alteration, restoration, rehabilitation, demolition, or relocation of any Historic Landmark, or any Property within a Historic District, nor shall any person make any material change in the light fixtures, sidewalks, fences, steps, paving, or other exterior elements visible from a public right-of-way which affect the appearance and cohesiveness of any Historic Landmark or any Property within a Historic District without having been issued a Certificate of Appropriateness.

(b) Signs. No person shall carry out any construction, reconstruction, alteration, restoration, or rehabilitation of a sign for any Historic Landmark or any property within a Historic District without having been issued a sign permit, in lieu of a Certificate of Appropriateness, from the City Manager, or his/her designee ("City Representative"). Requests for signs for any Historic Landmark or any Property within a Historic District shall be historically compatible in size, scale, color, material and complementary to the character of the Property, neighborhood or environment of the Property or Historic District. The City Representative shall have decision making authority for all such signs. Property owners who disagree with the decision of the City Representative may appeal as provided for herein.

(c) Exceptions: The following matters are hereby exempted from this Section 22-241.

- (i) Landscaping; and
- (ii) Sidewalks, streets, signs, paving or other fixtures located within the public right-of-way and owned by any governmental entity; and
- (iii) Remodeling and other alterations to the interior of a structure that does not affect the exterior of such structure.

**Sec. 22-243. Criteria for Approval of a Certificate of Appropriateness** - In making a recommendation on an application for a Certificate of Appropriateness, the Board shall be guided by the following:

- (a) Minimal alteration of the building, structure, object, or site and its environment are encouraged.
- (b) The removal or alteration of any historic material or distinctive architectural features should be avoided where possible.
- (c) Changes which may have taken place in the course of time and are significant evidence of the history and development of a building, structure, object, or site and its environment may have acquired significance in their own right. In this event, the Board may apply the criteria for approval to the changes in addition to the original design of the structure.
- (d) Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure, object, or site shall be kept where possible.
- (e) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- (f) Contemporary design for new construction, alterations and additions to existing properties shall not be discouraged when such alterations and additions are compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

- (g) In the event of a building in a Historic District that has not been individually designated as a historic structure and the historic qualities or character cannot be ascertained or are not historically appropriate with the character of the Historic District, the owner of such building may request a Certificate of Appropriateness, to that effect, from the Board.

**Sec. 22-244. Certification of Appropriateness Application Procedure**

- (a) Unless otherwise provided for herein, prior to the commencement of any work requiring a Certificate of Appropriateness the property owner shall file an application for such a certificate with the City Representative. The application shall contain:
- (i) Name, address, telephone number of applicant, detailed description of proposed work.
  - (ii) Location and photograph of the property and adjacent properties.
  - (iii) Elevation drawings of the proposed changes, if available.
  - (iv) Samples of materials to be used, if applicable.
  - (v) Any other information, which the Board may deem necessary, in order to demonstrate the proposed work.
- (b) The City Representative shall submit the application to the Board for review and recommendation. The Board shall review the application within forty-five (45) days from the date the application is received by the Board, at which time an opportunity will be provided for the applicant to be heard. The Board shall make recommendation for the approval, denial, or approval with modifications, of the permit within fifteen (15) days after the review meeting. In the event the Board does not make such recommendation within sixty (60) days of the receipt of the application, an application may be acted upon by the City Representative.
- (c) Except as provided for herein, no building permit for a Historic Landmark or Property within a Historic District shall be issued for proposed work until a Certificate of Appropriateness has first been issued. The Certificate of Appropriateness required by this ordinance shall be in addition to, and not in lieu of, any building permit that may be required by any other ordinance of the City of Burnet
- (d) The Board shall state its recommendations pertaining to the approval, denial, or with modification of the application in writing. The recommendation shall be returned to the City Representative for action.



- (e) In the event an applicant for a Certificate of Appropriateness is dissatisfied with the action of the City Representative, the applicant shall have the right to appeal as provided for herein.

**Sec. 22-245. Certificate of Appropriateness Required for Demolition**

- (a) Except as provided for herein, a permit for the demolition of a Historic Landmark or property within a Historic District, including secondary buildings, shall not be granted by any department of the City of Burnet without a Certificate of Appropriateness.
- (b) When considering a Certificate of Appropriateness for demolition, the Board shall take into consideration:
- (i) If the structure is in such condition that it is not a reasonably viable candidate for restoration, or
  - (ii) If materials or craftsmen are no longer available or are prohibitive in cost, or
  - (iii) If the property cannot be adapted for any other use, whether by the current owner or by a purchaser, or
  - (iv) If efforts to find a purchaser interested in acquiring the property and preserving it have failed, or
  - (v) If peculiar and unusual circumstances prevent the reasonable use of the property, or
  - (vi) If the historic qualities or character of the property cannot be ascertained or are not historically appropriate with the character of the Historic District and/or other properties in its proximity.
- (c) If any of the above criteria are applicable to the Property, the Board may issue a Certificate of Appropriateness for demolition.
- (d) Any structure built in the place of a demolished building shall meet the criteria herein for new construction and shall require a Certificate of Appropriateness.

**Sec. 22-246. Demolition by Neglect** - No owner or person with an interest in real property designated as a Historic Landmark or included within a Historic District shall permit the Property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the Historic District as a whole or the life and character of the Property itself.

In the event the Board makes a recommendation of Demolition by Neglect of a Property to the City Representative, the City Representative may take action as provided for in the City of Burnet Code of Ordinance for any deteriorating structure.

Examples of such deterioration include:

- (a) Deterioration of exterior walls or other vertical supports.

- (b) Deterioration of roof or other horizontal members.
- (c) Deterioration of exterior chimneys.
- (d) Deterioration or crumbling of exterior stucco or mortar.
- (e) Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors.
- (f) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

**Sec. 22-247. Appeal Procedure**

An applicant for a Certificate of Appropriateness or a Sign Permit, dissatisfied with the action of the City Representative relating to the Certificate of Appropriateness or Sign Permit, shall have the right to appeal to the Board of Adjustment, within ninety (90) days after receipt of notification of such action. The Board of Adjustment shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in Chapter 118, Section 118-74 of the code of ordinances of the City of Burnet.

**Sec. 22-248. Enforcement** - All work performed under a building permit issued pursuant to a Certificate of Appropriateness shall conform to any requirements included therein. It shall be the duty of the City Representative to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the Certificate of Appropriateness or upon notification of such fact by the Board and verification by the City Representative, the City Representative shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work is in effect.

**Sec. 22-249. Ordinary Maintenance** - Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a Historic Landmark or Property within a Historic District which does not involve a change in design, material, or outward appearance. In-kind replacement or repair is included in this definition of ordinary maintenance.

**Sec. 22-250. Bylaws** - Any and all by-laws enacted to date shall be repealed.

**Sec. 22-251. Penalties** - Failure to comply with any of the provisions of this section shall be deemed a violation and the violator shall, upon conviction, be found guilty of a

misdemeanor charge, punishable by a fine of not more than \$500 for each violation. Each day the violation exists shall constitute a separate offense.

**Section 3. Effective Date.** This ordinance shall be in force and effect from and after its final passage on second reading on the date shown below.

**Section 4. Open Meetings.** It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, Chapter 551, Texas Government Code.

**Approved** on the first reading this the 26<sup>th</sup> day of July, 2016.

**Approved and Adopted** on the second and final reading this 9<sup>th</sup> day of August, 2016.

**CITY OF BURNET, TEXAS**

  
\_\_\_\_\_  
Gary Wideman, Mayor

ATTEST:

  
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Kelly Dix, City Secretary

