

ORDINANCE NO. 2003-07

AN ORDINANCE OF THE CITY OF BURNET, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF A CITY OF BURNET HISTORICAL BOARD; 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 is authorized by the general laws of the State of Texas, including but not limited to Ch.221, Tex. Loc. Gov't. Code, the Municipal Zoning Authority, specifically authorizes zoning functions and procedures for municipalities; and

WHEREAS, the City is authorized by the general laws of the State of Texas, including but not limited to Ch. 221, Tex. Loc. Gov't. Code, Section 211.005 authorizes 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. 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 Historical Board" (Board). The Board shall establish by-laws that are consistent with the precept of this ordinance.

Section 3. 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 Courthouse Square 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 act 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) Insure 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.

Section 4. Funding. The City of Burnet may provide funding to the Board as approved by the City Council.

Section 5. Board. A five-member board is hereby established to plan and recommend the functions and activities of the City of Burnet Historical Board. The Board shall consist of three at-large members and two members of the Burnet County Historical Board. As positions become open, the directors shall be appointed by the City Council. In the event a board member leaves prior to the expiration of his/her term, the City Council shall appoint a board member to fill the un-expired term. At-large directors shall serve no more than two, two-year terms. Terms shall be staggered as to provide for two at-large members to be replaced in even numbered years and one at-large member to be replaced in odd numbered years. Members of the board shall be citizens of the City of Burnet. All Board members, regardless of background, shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the City of Burnet. The Chairman and Vice Chairman of the Board shall be elected by and from the members of the Board annually.

Should a conflict of interest arise with a member of the board, the member shall abstain from voting on the issue and a record of the vote will be reflected in the minutes.

The Board shall meet at least monthly, if business is at hand. Special meetings may be called at any time by the Chairman or Vice-Chairman, or on the written request of any two Board members. All meetings shall be held in conformance with the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

A quorum for the transaction of business shall consist of not less and a majority of the full authorized membership.

Section 6. Activities. The Board shall be empowered to:

- (a) Prepare rules and procedures as necessary to carry out the business of the Board, which shall be ratified by the City Council of the City of Burnet.
- (b) Adopt criteria for the designation of historic, architectural, and cultural landmarks and delineation of historic districts, which shall be recommended to the City Council of the City of Burnet.
- (c) Conduct survey's and maintain an inventory of significant historic, architectural, and cultural landmarks and all properties located in historic district within the city.
- (d) Recommend the designation of resources as landmarks and historic districts.
- (e) Create committees from among its membership and delegate to these committees' responsibilities to carry out the purposes of this ordinance.
- (f) Maintain written minutes which record all actions taken by the Board and the reasons for taking such actions.
- (g) Recommend conferral of recognition upon the owners of landmarks or properties within districts my means of certificates, plaques and/or markers.
- (h) Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
- (i) Make recommendations to the City government concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the City.
- (j) Recommend approval or disapproval of applications for Certificates of Appropriateness pursuant to this act.
- (k) Prepare and submit annually to the City Council, a report summarizing the work completed during the previous year.
- (l) Prepare specific guidelines for the review of landmarks and districts.
- (m) Recommend the acquisition of a landmark structure by the City where its preservation is essential to the purpose of this act and where private preservation is not feasible.

- (n) Propose and recommend to the City Council of the City of Burnet, tax abatement programs for landmarks or districts.
- (o) Accept on behalf of the City, the donation of preservation easements and development rights as well as any other gift of value for the purpose of historic preservation, subject to the approval of the City Council of the City of Burnet.

Section 7. Designation of Historic Landmarks.

- (a) These provisions pertaining to the designation of historic landmarks constitutes a part of the comprehensive zoning plan of the City of Burnet.
- (b) Property owners of proposed historic landmarks shall be notified prior to the Board hearing on the recommended designation. At the Board's public hearing, owners, 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.
- (c) Upon recommendation of the Board, the proposed historic landmark shall be submitted to the Planning and Zoning Commission within the time frame as governed by the City of Burnet Zoning Ordinance.
- (d) The City Council shall approve or disapprove the Planning and Zoning Commission recommendation at the next regularly scheduled meeting.
- (e) Upon designation of a building, object, site, or structure as a historic landmark or district, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of Burnet County, the tax records of the City of Burnet, and the Appraisal District as well as the official zoning maps of the City of Burnet. All zoning maps should indicate the designated landmarks with an appropriate mark.

Section 8. Designation of Historic Districts

- (a) These provisions pertaining to the designation of historic district constitute a part of the comprehensive zoning plan of the City of Burnet.
- (b) Property owners within a proposed historic district shall be notified prior to the Board's hearing on the recommended designation. At the Board's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence that will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic district.
- (c) The Board may recommend the designation of a district in accordance with the City of Burnet Zoning Ordinance if it:
 - (i) Contains properties and an environmental setting which meet one or more of the criteria for designation of a landmark; and
 - (ii) Constitutes a distinct section of the city.
- (d) Upon recommendation of the Board, the proposed historic district shall be submitted to the Planning and Zoning Commission within the time frame as governed by the City of Burnet Zoning Ordinance.
- (e) The City Council shall approve or disapprove the Planning and Zoning Commission recommendation at the next regularly scheduled meeting.
- (f) Upon designation of a historic district the City Council shall cause the designated boundaries to be recorded in the Official Public Records of real property of Burnet County, the tax records of the City of Burnet and the Appraisal District as well as the official zoning maps of the City of Burnet. All zoning maps should indicate the designated historic district by an appropriate mark.

Section 9. Criteria for Designation of Historic Landmarks and Districts - A historic landmark or district may be designated if it meets any of the following criteria:

- (a) Possesses significance in history, architecture, archeology, and culture,
- (b) Is associated with events that have made a significant contribution to local, regional, state, or national history,
- (c) Embodies the distinctive characteristics of a type, period, or method of construction,
- (d) Represents the work of a master designer, builder, or craftsman,
- (e) Represents a significant, established and familiar visual feature of the city.

Section 10. Certificate of Appropriateness for Alteration or New Construction Affecting Landmarks or Historic Districts - No person shall carry out any construction, reconstruction, alteration, restoration, rehabilitation, 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, signs, 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.

Section 11. Criteria for Approval of a Certificate of Appropriateness - In considering an application for a Certificate of Appropriateness, the Board shall be guided by any adopted design guideline. Any adopted design guideline shall be made available to the property owners of historic landmarks or within historic districts. The following, from *The Secretary of the Interior's Standards for Rehabilitation of Historic Buildings*, shall be a minimum guideline for approval:

- (a) Every reasonable effort shall be made to adapt the property in a manner that requires minimal alteration of the building, structure, object, or site and its environment.
- (b) The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed.
- (c) The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- (d) All buildings, structures, objects, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- (e) Changes, which may have taken place in the course of time, are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (f) Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure, object, or site shall be kept where possible.
- (g) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features whenever possible, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (h) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials should not be undertaken.

- (i) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- (j) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
- (k) Whenever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.

Section 12. Certification of Appropriateness Application Procedure

- (a) Prior to the commencement of any work requiring a Certificate of Appropriateness the owner shall file an application for such a certificate with the Code Enforcement Office. 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) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination (if any), and a plan showing the sign location on the property.
 - (vi) Any other information, which the Board may deem necessary, in order to visualize the proposed work.
- (b) The Code Enforcement Office shall submit the application to the Board for review and recommendation. The Board shall review the application at a regularly scheduled meeting within thirty (30) 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 approve, deny, or approve with modifications, the permit within forty-five (45) days after the review meeting. In the event the Board does not act within ninety (90) days of the receipt of the application, a permit may be granted.
- (c) No building permit shall be issued for such proposed work until a Certificate of Appropriateness has first been issued by the Code Enforcement Office. The Certificate of Appropriateness required by this act 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) All decisions of the Board shall be in writing. The Board's decision shall state its recommendations pertaining to the approval, denial, or approval with modification of the application. The recommendation shall be returned to the Code Enforcement Office for action.
- (e) In the event an applicant for a Certificate of Appropriateness is dissatisfied with the recommendation of the Board relating to the issuance or denial of a Certificate of Appropriateness, the applicant shall have the right to appeal to the Board through the Economic Hardship Application Procedure as defined in Section 14 of this Ordinance.

Section 13. Certificate of Appropriateness Required for Demolition - A permit for the demolition of a historic landmark or property within a historic district, including secondary buildings and landscape features, shall not be granted by the Code Enforcement Department of the City of Burnet, without the review of a completed application for a Certificate of Appropriateness by the Board, as provided for in Section 7, 8 and 9 of the ordinance.

Section 14. Economic Hardship Application Procedure

- (a) After receiving written notification from the Board of the denial of Certificate of Appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Board makes a finding that hardship exists.
- (b) When a claim of economic hardship is made due to the effect of this ordinance, the owner must prove that:
 - (i) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
 - (ii) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, such would result in a reasonable return; and
 - (iii) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- (c) The applicant shall consult in good faith with the Board, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be shown to the Board.
- (d) The Board shall hold a public hearing on the application within thirty (30) days from the date the application is received by the Board.
- (e) Following the hearing, the Board has thirty (30) days in which to prepare a written recommendation to the Code Enforcement Office. In the event that the Board does not act within ninety (90) days of the receipt of the application, a permit may be granted.
- (f) All decisions of the Board shall be in writing. The Board's decision shall state its recommendations pertaining to the approval or denial of the hardship application. The recommendation shall be returned to the Code Enforcement Office for action.
- (g) An applicant for a Certificate of Appropriateness dissatisfied with the action of the Board relating to the issuance or denial of a Certificate of Appropriateness shall have the right to appeal to the Board of Adjustment, in accordance with Section 9.05 of the Home Rule Charter, within thirty (30) 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 the general zoning ordinance of the City.

Section 15. Enforcement - All work performed pursuant to a Certificate of Appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the Code Enforcement Office of the City of Burnet 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 Code Enforcement Officer, the Code Enforcement Officer 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.

Section 13. Ordinary Maintenance - Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a 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.

Section 14. Demolition by Neglect - No owner or person with an interest in real property designated as a 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.

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.

Section 15. Penalties - Failure to comply with any of the provisions of this ordinance 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 \$500.00 for each violation.

Section 16. 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 17. 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 8th day of April, 2003.

Approved and Adopted on the second and final reading this 22nd day of April, 2003.

ATTEST:

CITY OF BURNET, TEXAS

Crista Goble, City Secretary

Dennis L. Kincheloe, Mayor