

ORDINANCE NO. 2011-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET, AMENDING SECTIONS 18-41 (3) AND 18-41 (4) OF THE CITY OF BURNET CODE OF ORDINANCES, ESTABLISHING LEASE REGULATIONS AND SETTING FEES FOR T-HANGARS AND SHELTERS; PROVIDING AN EFFECTIVE DATE, PROVIDING OPEN MEETINGS CLAUSE(S); AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Burnet (City) is the owner of the airport located in Burnet, Texas known as the Kate Craddock Field (Airport); and

WHEREAS, the City leases space in the form of land, hangars and structures to the general public to be used for the interest of the public; and

WHEREAS, the City establishes and collects fees for use of said space; and

WHEREAS, the City is permitted to regulate airport facilities and determines it is advantageous to itself and to the operation of the Airport to lease certain land/hangar/building/office as stated herein; and

WHEREAS, the City has determined that revisions to the regulations related to the fees and lease agreement terms for the Airport are necessary to benefit both the City and its citizens.

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

Section 1. Repeal and Amendments. Section 18-41 (3) and (4) of the City of Burnet Code of Ordinances are hereby repealed in their entirety with the following language to be adopted as follows:

(3) *Rule 3. T-hangars, open shelters, or apron space (tie-down) restrictions:*

- a. **PREMISES:** The premises at the Airport to be leased shall be T-hangars, open shelters, or apron space (tie-downs), collectively known as Storage Hangars, which are owned by the City, and may be leased to private individuals, companies, corporations or other entities (lessee) for the storage of aircraft and ancillary aircraft equipment only, together with reasonably necessary access across the City's adjoining areas.
- b. **TERMS:** With the exception of short term tie-down leases, all leases for Storage Hangars shall be initiated through the execution of a signed lease application, signed by the lessee, and shall be leased on a monthly basis

which will automatically renew monthly and be in effect from month to month until such time the lease is terminated in accordance with section (3) k. herein. For purposes of this section, "short term tie-down leases" shall mean the use of tie-down spaces for less than seven (7) consecutive days or less than any fifteen (15) non-consecutive days in any given month. All leases shall be executed subject to all City ordinances, including this one, and the terms of such leases can be amended through the amendment to this ordinance or written agreement between the City and the lease. However, no written lease can be in conflict with the terms and conditions articulated in this ordinance.

Short term tie-down locations do not require a written lease. Such short-term tie downs are more of a service than a lease of property. Utilization of the service shall be at the risk of the one utilizing the tie-down and City shall not be liable for any damage to property or injury to persons.

- c. **RENT:** Storage Hangar rent shall be paid monthly in advance in accordance with the fee schedule included herein. Rent is due by the first day (1st) of the month and shall be considered past due at midnight on the tenth day (10th) of the month. A late charge of \$25.00 will be assessed for any monthly payment not RECEIVED at the Burnet City Hall by the tenth day of the month.

Fee Schedule:

Description	Rate	Deposit
Short term tie-down leases	\$0	\$0
Long term tie-down leases	\$50/month	\$50
Open Shelters	\$100	\$100
Standard T-Hangars	\$250	\$250
Large T-Hangar	\$350	\$350

- d. **DEPOSIT:** A deposit equal to one month's rent shall be paid to the City in addition to the first month's rent and shall be held on account until the lease is terminated in accordance with the requirements herein. Upon termination of the lease, all airport lease deposits held with the City shall, in addition to securing the payment for airport leases receivable, be applied to costs for repairs or cleaning of the leased premises, and may be applied to any other debt or obligation owed the City by the person(s) having made the lease deposit. The remaining balance of any and all lease deposits collected by the City shall be credited to the account of the individual who secured the deposit in his or her name.

The deposit will first be applied to any outstanding lease bills, then to any repairs or cleaning, then to any additional outstanding debts to the City prior to any refund being offered. Additional outstanding debts of the individual seeking return of a lease deposit include, but are not limited to:

Other City services which have been provided under said lessee's name and that have an outstanding balance due and owing to the City as follows:

1. Balances owed for EMS, fire or other emergency services;
 2. Liens placed by the City upon any property owned by such person;
 3. Any outstanding fees, charges, court costs, fines or warrants payable by such person by virtue of any record, action or proceeding in the municipal court;
 4. Any balance owed for Galloway Hammond Recreation Center;
 5. Any balance owed for Delaware Springs Golf Course; and
 6. Any other balance as shown by the City.
- e. **USE OF PREMISES:** The Storage Hangars leased shall be used only for the storage of aircraft and only for the storage of aircraft owned or leased by the lessee. No maintenance of the stored aircraft shall be conducted in the Storage Hangars except such minor maintenance as would normally be performed by an aircraft owner without the benefit of an aircraft mechanic. Hangar space shall not be used for living/sleeping purposes.
- f. **OBLIGATIONS OF THE CITY:** Obligations of the City shall be the payment of electricity and water utilities, plus maintaining the Storage Hangar in good working order, including the building and equipment, to wit:
- 1) Electrical service to each Hangar Space.
 - 2) Light fixtures in each Hangar Space.
 - 3) Electric Bi-Fold Door.
- g. **GENERAL OBLIGATIONS OF THE LESSEE:** The general obligations of the lessee shall be to:
- 1) Maintain the leased premises reasonably clean and free of trash, litter, junk cars, scrap airplane parts, and other materials which are unrelated to the normal operation and maintenance of aircraft.
 - 2) Abide by the applicable rules of the Texas Department of Transportation, The Federal Aviation Administration, the Environmental Protection Agency, the Texas Commission on Environmental Quality, the Texas Department of Agriculture, or any other agency regarding airport rules, regulations and ordinances, including, but not limited to, those concerning the use, storage, and disposal of hazardous chemicals, fuel, and/or oil.

- 3) Abide by the manufacturer's directions in regards to the use, storage and disposal of pesticides, herbicides, and other chemicals and their containers.
- 4) Lessee shall undertake no alterations or modifications to the premises or building without express written consent of the City and upon termination of the lease, any such alterations or modifications shall become the property of the City.
- 5) Lessee shall not store any combustible materials on or near the premises, and shall keep all other materials or parts relevant to airplane operation or maintenance in suitable containers within the Storage Hangar.
- 6) Where provided, the lessee shall keep Storage Hangar doors closed and locked during his/her absence.
- 7) Lessee shall not use the premises for any illegal or unauthorized purpose.
- 8) Lessee shall make good any damage to the premises, its services and equipment arising from damage or negligence of the lessee.
- 9) No aircraft, equipment or vehicles shall be left unattended on the hangar ramp except that aircraft only may be stored in the tie-down areas specifically designed and provided for aircraft storage. The City shall have the right to remove unattended aircraft, equipment or vehicles at the owner's expense.
- 10) Lessee shall be responsible for insuring the contents of the premises and any additions thereto made by the lessee, and the lessee shall obtain liability insurance for and with respect to its operation on the premises in a minimum amount of \$250,000 per person for bodily injury; \$500,000 per accident for bodily injury; and \$250,000 for property damages. The City shall be included as additionally insured at the lessee's expense. The lessee shall furnish proof of such insurance coverage to the City.
- 11) The City shall not be liable for any damages to persons or property caused by the negligence of the lessee or due to the fact that the Storage Hangar on said premises or any appurtenance thereto is improperly constructed or need repairs. It is incumbent upon the lessee to inspect the premises prior to leasing. Lessee shall accept the

premises as suitable for the purposes for which it is leased and accepts the premises and each and every appurtenance thereto and waives defects therein.

12) Lessee shall indemnify and hold the City harmless from all claims, demands, damages, costs and expenses of any kind or nature whatsoever, including loss, damage or injury to persons or property that may arise from or partially from lessee's use or occupancy of the leased premises. The City assumes no liability for damage to aircraft or other property from any cause while the same are stored in the Storage Hangar or being operated on the premises.

h. **SUBLEASE/ASSIGNMENT:** The lessee shall not sublease the premises nor shall the lease be assigned. Storage of aircraft not belonging to, or leased by the lessee, shall be construed as a sublease and unless approved by City shall be grounds for termination of the lease and eviction from the Storage Hangar.

i. **SECURITY:** Lessee shall abide by and cooperate with the City in the enforcement and implementation of applicable airport security regulations and measures. Lessee shall furnish such equipment as may be necessary to properly secure the stored aircraft. Lessee shall be solely responsible for setting brakes, placing chokes, tying down or otherwise securing the stored aircraft.

j. **LIABILITY:** City shall not be responsible for any loss occasioned by fire, theft, rain, windstorm, hail, or any other cause whatsoever, whether said cause be the direct, indirect, or merely a contributing factor in producing the loss of any airplane or personal property. The aircraft and its contents are to be stored at lessee's risk whether on the field or in the Storage Hangar. The City assumes no liability for damage to aircraft or other property from any cause while the same are stored in the Storage Hangar or being operated on the Airport premises.

k. **TERMINATION:** The lease agreement may be terminated by either party upon thirty (30) days written notice of non-renewal. In addition, the City may automatically terminate the lease during the course of the lease agreement in the event:

- 1) Rent is not RECEIVED in the City office by the 20th of any month;
- 2) Lessee has failed to comply with any condition of the lease and has not reasonably corrected the deficiency upon notice by the City;
and
- 3) For violations of section 3(h) above.

In the event of such breach, the City shall notify the lessee of termination in writing. Lessee shall have three (3) days to remove the aircraft from the Storage Hangar after which the City is hereby specifically authorized to

remove the aircraft without further obligation to the lessee or liability for aircraft removed.

- I. **EVICTIION:** If the lessee breaches any of the conditions of the lease, then the City has the grounds to evict the lessee. After three (3) days from receipt of a written eviction notice from the City, the lessee forfeits all rights under the lease agreement and will immediately vacate the premises. When given by any means other than delivery by hand, notice given by mail shall be considered to have been given five (5) days after the date of mailing, postage prepaid certified or registered mail. The City retains a contractual landlord's lien on all property stored on the premises for the payment of rents and charges that are due and unpaid. The lien attaches the date the lessee places property on the premises. The City may enforce the lien by delivering a written Notice of Claim in person, or by certified mail, to the lessee's last known address provided to the City. If the City's claim is not satisfied before the 15th day after the notice is issued, all property stored in or on the premises may be sold at public auction to satisfy charges that are due and unpaid, together with reasonable expenses of the sale.

- m. **INITIAL ACCEPTANCE OF LEASE:** Adoption of this ordinance shall constitute notice of termination of all existing Storage Hangar leases to be effective upon the next month renewal of each such existing lease. Any lessee holding an existing Storage Hangar lease with the City, at the time of the adoption of this ordinance, shall be assumed to have accepted the terms of this ordinance and a new lease shall be automatically established. Any lessee who does not accept the terms of this ordinance shall notify the City in writing within thirty (30) days of the adoption of this ordinance and shall immediately vacate the Storage Hangar. Failure to notify the City and vacate the hangar shall be considered a violation of this ordinance. After the acceptance of this ordinance, all new leases shall be executed through an application lease process to be established by the City.

(4) *Rule 4. Lease of airport property, other than T-hangars, open shelters or apron space to private individuals, companies or corporations.* The City may lease property within the building areas or other portions of the Airport for the private use and/or construction of hangars, building or lean-tos, aprons, taxiways, auto parking lots, or other uses in accordance with the approved Airport Layout Plan. The terms of each lease shall be developed based, at a minimum, on fair market value at the time of development and shall be submitted to the City Council for final approval. All leases covered in this section are subject to the following:

- a. The City may allow, at a minimum, for the lease of property on the Airport of the then current fair market prices with the proviso that where new permanent structures are constructed, at the end of the lease period the

title of all structures, buildings or hangs erected on the leased property will transfer to the City.

- b. The combined terms of any lease shall not be longer than thirty (30) years.
- c. All leases must include a provision for penalties in the event of abandonment or failure to use the space for aviation purposes, up to and including termination of the lease and transfer of title of the property or improvements to the City.
- d. All construction on the airport property must be in accordance with all applicable City, state, and federal laws, rules, codes, and regulations.

Section 3. Severability. If any of the provisions of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application and to this end, the provisions of these regulations are declared to be severable.

Section 4. Conflicts. This Ordinance shall be cumulative of all provisions of ordinances of the City except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the provisions of this ordinance control.

Section 5. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting(s) where this ordinance was considered and passed 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.

PASSED AND APPROVED on First Reading this 13th day of December, 2011.

FINALLY PASSED AND APPROVED on this the 10th day of January, 2011.

CITY OF BURNET, TEXAS

Gary Wideman, Mayor

ATTEST:

Kelly Dix, City Secretary