



NOTICE OF MEETING OF THE GOVERNING BODY OF THE CITY OF BURNET

Notice is hereby given that a **Regular City Council Meeting** will be held by the governing body of the City of Burnet on the **26th day of May, 2020** at **3:00** p.m. in the Council Chambers, Burnet Municipal Airport, 2402 S. Water, Burnet, Tx. In order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19), a Declaration of a Public Health Emergency was executed by Mayor Bromley on March 19, 2020. The Council Chambers will be closed to public attendance. A Zoom Webinar with toll free conference call capability has been established for access as follows:

Computer: Please click the link below to join the webinar:

<https://us02web.zoom.us/j/89563755518?pwd=enRVbzZzbXBjLzlxR3I5emZ5c2EwZz09>

OR: Go to: www.zoom.us

Enter Webinar ID when prompted: 895 6375 5518 #

Enter Password when prompted: 528904 #

If you would like to address the Council with a Public Comment while logged-in online, please use the “raise your hand” feature.

By Telephone Call: 888-475-4499 or 877-853-5257 (Toll Free Numbers)

Enter Webinar ID when prompted: 895 6375 5518 #

Enter Password when prompted: 528904 #

If you would like to address the Council with a Public Comment while dialed in via telephone, please use the “raise your hand” feature, by pressing *9 while on the phone.

This notice is posted pursuant to the Texas Government Code, Chapter §551-Open Meetings.

The following subjects will be discussed, to-wit:

CALL TO ORDER:

ROLL CALL:

1. CONSENT AGENDA ITEMS:

(All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Council when the Consent Agenda is opened for Council Action.)

1.1) Approval of the May 19th, 2020 Special City Council Meeting Minutes

2. ACTION ITEMS:

2.1) Discuss and consider action: Direction to staff and authorization for the City Manager to execute processes/plans due to the COVID-19 response: D. Vaughn

2.2) Discuss and consider action: FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NO. 2012-06 BY AMENDING CITY OF BURNET CODE OF ORDINANCES, CHAPTER 118 – “ZONING,” SECTION 118-20, CHART 1 FOR THE PURPOSE OF REVISING MINIMUM FRONT YARD SETBACKS ESTABLISHED FOR THE LIGHT COMMERCIAL – DISTRICT “C-1”, THE MEDIUM COMMERCIAL – DISTRICT “C-2”, AND THE HEAVY COMMERCIAL – DISTRICT “C-3” FOR THE PURPOSE OF REDUCING THE FRONT YARD SETBACK TO TWENTY FIVE FEET (25’); PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE: J. Lutz

2.3) Discuss and consider action: FIRST READING OF AN ORDINANCE TO REZONE APPROXIMATELY 0.487 ACRES, LEGALLY DESCRIBED AS LOTS 3-A AND 3-B, BLOCK 24, OF THE PETER KERR PORTION OF THE CITY OF BURNET, FROM ITS PRESENT DESIGNATION OF SINGLE-FAMILY RESIDENTIAL—DISTRICT “R-1” TO A DESIGNATION OF TOWNHOMES—DISTRICT “R-2A,” SAID TRACT BEING ADDRESSED AS 2050 EAST POLK STREET (STATE HWY. 29), AND BEING GENERALLY LOCATED AT THE NORTHEAST INTERSECTION OF N. VANDERVEER ST. AND E. POST OAK STREET; PROVIDING A REPEALER CLAUSE; PROVIDING A NON-SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE: J Lutz

2.4) Discuss and consider action: Rental of a portion of Hangar “D” at Burnet Municipal Airport for a flight school: Council Member Clinton

2.5) Discuss and consider action: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 2.14 SUBSTANCE ABUSE OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS: K. Sames

2.6) Discuss and consider action: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 4.02 TRAINING AND EVALUATION PERIOD OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS: K. Sames

2.7) Discuss and consider action: FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET AMENDING THE CODE OF ORDINANCES SECTION 110-136 (ENTITLED "ELECTRIC CONNECTION FEES") AND SECTION 110-137 (ENTITLED "RESPONSIBILITY FOR CONNECTION OF ELECTRICAL SERVICE") BY REVISING THE ELECTRIC CONNECTION FEES, ELECTRIC METER INSTALLATION CHARGES, AND ELECTRIC TAP FEES; PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE: G. Courtney

2.8) Discuss and consider action: Direction to staff regarding the creation of a public utility payment assistance program: D. Vaughn

3. REPORTS:

3.1) Addendum to the City Council Agenda: Department and Committee Reports/Briefings: The City Council may or may not receive a briefing dependent upon activity or change in status regarding the matter. The listing is provided to give notice to the public that a briefing to the Council on any or all subjects may occur.

3.1(I.7) Building Permits Report: J. Lutz

4. REQUESTS FROM COUNCIL FOR FUTURE REPORTS:

5. ADJOURN:

Dated this 22nd, day, of May, 2020

CITY OF BURNET

CRISTA GOBLE BROMLEY, MAYOR

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the governing body of the above named City, BURNET, is a true and correct copy of said NOTICE and that I posted a true and correct copy of said NOTICE on the bulletin board, in the City Hall of said City, BURNET, TEXAS, a place convenient and readily accessible to the general public at all times, and said NOTICE was posted on May 22nd, 2020, at or before 3 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

Kelly Dix, City Secretary

NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS:

The City Council Chamber is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's office (512.756.6093) at least two working days prior to the meeting. Requests for information may be faxed to the City Secretary at 512.756.8560.

RIGHT TO ENTER INTO EXECUTIVE SESSION:

The City Council for the City of Burnet reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

STATE OF TEXAS {}
COUNTY OF BURNET {}
CITY OF BURNET {}

On this the 19th day of May, 2020, the City Council of the City of Burnet, TX convened in Regular Session, at 3:00 p.m., at the regular meeting place thereof. In order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19), a Declaration of a Public Health Emergency was executed by Mayor Bromley on March 19, 2020. The Council Chambers were closed to public attendance. This meeting of the governing body meeting was streamed on the City of Burnet Facebook page. A toll free conference line was established for access via Zoom by calling 888-475-4499 Pin 399019; the following subjects were discussed, to-wit:

Mayor (present in chambers)	Crista Goble Bromley
Council Members (via Zoom call):	Danny Lester, Paul Farmer, Cindia Talamantez, Mary Jane Shanes, Philip Thurman
Absent	Tres Clinton
City Manager	David Vaughn
City Secretary	Kelly Dix

Guests: Mark Ingram, Habib Erkan, Adrienne Field (present in Chambers) Gene Courtney, Alan Burdell, Kelli Sames, Alex Copeland, Ben Hall, Jason Lutz, Patricia Langford (via Zoom call)

CALL TO ORDER: The meeting was called to order by Mayor Bromley, at 3:00 p.m.

ROLL CALL: City Secretary Kelly Dix called the Roll. Mayor Bromley was present in Chambers. Council Member Shanes, Farmer, Talamantez, Lester and Thurman (entered the conference at 3:01 after roll called) called in on the zoom conference. Council Member Tres Clinton was absent. Quorum was established.

CONSENT AGENDA ITEMS:

(All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Council when the Consent Agenda is opened for Council Action.)

Approval of the May 12th, 2020 Regular City Council Meeting minutes

Council Member Mary Jane Shanes moved to approve the consent agenda as presented. Council Member Paul Farmer seconded. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Farmer, Talamantez and Mayor Bromley all voted in favor. Council Member Clinton was absent. Council Member Thurman was a late arrival and did not vote on this item. The motion carried unanimously.

ACTION ITEMS:

Discuss and consider action: Updated Financial Projections as of April 30, 2020: D. Vaughn: Director of Finance Patricia Langford reviewed the most current financial projections with Council to include revenues, expenses and fund balances. No action taken.

Discuss and consider action: Direction to staff and authorization for the City Manager to execute processes/plans due to the COVID-19 response: D. Vaughn: No action taken.

Fire Chief Mark Ingram reported:

- The current number of COVID cases in the State and County and reported that there had not been any new cases in ten days for Burnet County
- The Fire Department would be conducting COVID testing on all nursing home and assisted living facilities to include staff and residents in the County
- Currently the Fire Department is conducting the COVID Antibody testing and if anyone is interested to call the Fire Department to set up an appointment

Director of Golf Doug Fipps reported:

- The Golf Course opened the snack bar and pro shop with social distancing protocols in place.
- Planning on opening up more morning tee times as the heat of the day slows afternoon play.
- Play has been steady

City Manager David Vaughn reported:

- The YMCA has resumed operations.
- Restroom facilities at the parks and RV park have been opened and posted with notification that cleaning is done once a day by staff and they enter at their own risk
- The splash pad will remain closed
- Ball fields will open June 1st and first scheduled play is June 15th, 2020
- The Chunk Your Junk program has resumed
- City Council remote meetings will continue until Council advises differently
- City Hall will open the lobby on June 1st, 2020
- 15,000 masks and 100 thermometers have been disbursed to area businesses
- The City received a \$10,000.00 refund from TML
- City Staff is working on various grants to supplement costs of COVID-19 expenses
- Utility Collections are better than expected and in good shape
- The Burnet Economic Development Corporation has issued approximately \$270,000.00 of the allocated \$300,000.00 for the BEDC Loan Program created to assist local businesses through the pandemic
- Staff is currently working on a plan to present to Council for utility assistance for commercial businesses

Discuss and consider action: Direction to staff pertaining to utility accounts: D. Vaughn: Council Member Danny Lester moved to continue with the established plan for utility assistance for an additional thirty days. Council Member Philip Thurman seconded. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Thurman, Farmer, Talamantez and Mayor Bromley all voted in favor. Council Member Clinton was absent. The motion carried unanimously.

Discuss and consider action: A RESOLUTION AUTHORIZING THE SUBMISSION APPLICATION FOR AND ACCEPTANCE OF THE PAYMENT OF FUNDS FOR THE FEDERAL CORONA VIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT GRANT CONGRESS APPROVED FOR DISBURSEMENT TO STATE AND LOCAL GOVERNMENTS; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND TAKE ACTIONS TO FACILITATE SUCH ACCEPTANCE: D. Vaughn: Council Member Paul Farmer made a motion to approve and adopt Resolution R2020-15 as presented. Council Member Mary Jane Shanes seconded. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Thurman, Farmer, Talamantez and Mayor Bromley all voted in favor. Council Member Clinton was absent. The motion carried unanimously.

REPORTS:

Addendum to the City Council Agenda: Department and Committee Reports/Briefings: The City Council may or may not receive a briefing dependent upon activity or change in status regarding the matter. The listing is provided to give notice to the public that a briefing to the Council on any or all subjects may occur.

Police Chief Hiring Process Update Report: D. Vaughn: City Manager David Vaughn reported that approximately eighty applications have been received for the Police Chief position. Staff has been reviewing the applications and narrowed the pool to approximately fifty applications so far. Interviews are expected to begin the first week of June and criteria is being compiled for the interview process. The interview process will be tiered and a “meet and greet” opportunity will be established for City Council with the top candidates before final selection.

Fire Department Update Report-Fire Calls: M. Ingram: Chief Ingram reported to Council that there have been several structure fires lately, both in the city limits and in the ETJ. Two of the fires were considered suspicious and turned over to the Burnet County Sheriff ‘s Office for investigation. The State Fire Marshall’s office will participate in the investigation.

REQUESTS FROM COUNCIL FOR FUTURE REPORTS: Council Member Philip Thurman requested a report on current projects and a report/list of all property that the City owns, its value, and status of what the property is intended for.

ADJOURN: There being no further business a motion to adjourn was made by Council Member Mary Jane Shanes at 4:05 p.m., seconded by Council Member Cindia Talamantez. City Secretary Kelly Dix called a roll

vote. Council Members Lester, Shanes, Thurman, Farmer, Talamantez and Mayor Bromley all voted in favor. Council Member Clinton was absent. The motion carried unanimously.

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary



Development Services

ITEM 2.2

Jason Lutz
Development Services
(512) 715-3215
jlutz@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: Discuss and consider action: FIRST READING OF AN ORDINANCE AMENDING ORDINANCE NO. 2012-06 BY AMENDING CITY OF BURNET CODE OF ORDINANCES, CHAPTER 118 – “ZONING,” SECTION 118-20, CHART 1 FOR THE PURPOSE OF REVISING MINIMUM FRONT YARD SETBACKS ESTABLISHED FOR THE LIGHT COMMERCIAL – DISTRICT “C-1”, THE MEDIUM COMMERCIAL – DISTRICT “C-2”, AND THE HEAVY COMMERCIAL – DISTRICT “C-3” FOR THE PURPOSE OF REDUCING THE FRONT YARD SETBACK TO TWENTY FIVE FEET (25’); PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE: J. Lutz

Background: City staff has begun the process of reviewing the City’s adopted zoning code in order to identify needed changes based on development trends, best planning practices, and state law changes.

Information: The first issue identified by staff was the need to update the setbacks in regard to commercial zoning districts.

Staff originally proposed to modify front, side, street side, and rear yard setbacks and posted notice based on those proposals. At this time staff would like to focus on only the front yard setbacks for commercial and spend more time reviewing other setbacks.

Staff Analysis: Based on review of the City’s code, other municipal setbacks, and best planning practices staff has identified front yard setbacks as an issue to move forward with.

The current front yard setbacks are 30’ for C-1 (light commercial), 40’ for C-2 (medium commercial), and 50’ for heavy commercial. Based on staff findings the City of Burnet is more restrictive than other municipalities in the hill country and other similarly sized cities. You will notice that the city’s smallest front yard setback is larger than the largest front yard setback of other municipalities (see comparison table below).

CITY	ZONING CATEGORY	ZONING INTENSITY	FRONT SETBACK
BURNET	C-1	Light	30'
	C-2	Medium	40'
	C-3	Heavy	50'
MARBLE FALLS	NC	Light	25'
	GC	Heavy	25'
	DD	Heavy/Urban	0'
DRIPPING SPRINGS	LR	Light	15'
	GR	Medium	25'
	CS	Heavy	25'
FREDERICKSBURG	C-1	Light	25'
	C-1.5	Medium	20'
	C-2	Heavy	15'
	CBD	Heavy/Urban	0'
Kerrville	C-1	Light	15'
	C-2	Medium	25'
	C-3	Heavy	25'
NOTE where multiple setback distances are listed, the 1st number is the general setback and the 2nd number is the setback adjacent to residential zones.			

After considering several factors regarding front yard setbacks staff is proposing to reduce all front yard setbacks to 25'.

Flexibility: The reduction of front yard setbacks will allow flexibility for re-development and new construction by allowing the structure to move closer to the street.

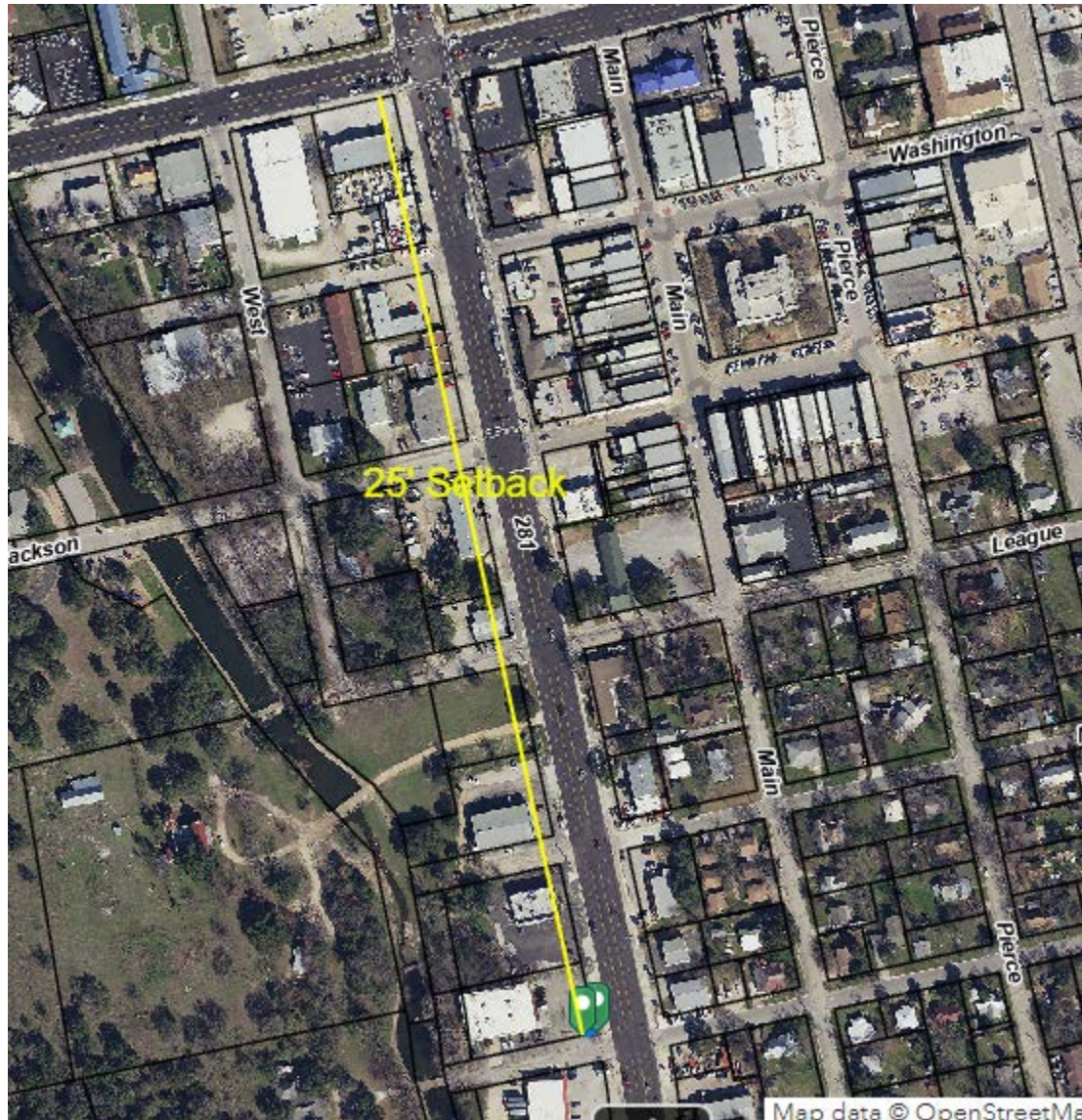
Many new developments are trending to front loaded building to help active the streetscape and encourage a pedestrian friendly environment.

It also allows existing structures to expand existing non-conforming businesses without going through lengthy variance processes.

The reality of development is that most structures will maintain at least the minimum or more for front yards based on how sites are designed. Any developer who wants parking in front (18' wide) plus a drive isle will (12') will still need to be at least 30 feet from the street. However, this

amendment would allow a new structure to provide parking in the rear and place more landscaping and sitting areas in the front.

Consistency: The reduction of front yard setbacks would keep new structures more consistent within the existing development. Most older structures along 281 have less than required 30'-50' setbacks required by code.



P&Z Recommendation: P&Z recommended approval of the proposed amendment to reduce the front yard setbacks for the C-1, C-2, and C-3 zoning districts to 25'. Two Commissioners voted against the proposed amendments.

Recommendation: Approve the first reading of Ordinance 2020-13 as presented.

ORDINANCE NO. 2020-13

AN ORDINANCE AMENDING ORDINANCE NO. 2012-06 BY AMENDING CITY OF BURNET CODE OF ORDINANCES, CHAPTER 118 – “ZONING,” SECTION 118-20, CHART 1 FOR THE PURPOSE OF REVISING MINIMUM FRONT YARD SETBACKS ESTABLISHED FOR THE LIGHT COMMERCIAL – DISTRICT “C-1”, THE MEDIUM COMMERCIAL – DISTRICT “C-2”, AND THE HEAVY COMMERCIAL – DISTRICT “C-3” FOR THE PURPOSE OF REDUCING THE FRONT YARD SETBACK TO TWENTY FIVE FEET (25’); PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Zoning Administrator proposed certain amendments to the setback requirements in Section 118-20 of the City Code; and

WHEREAS, on May 4, 2020, the Planning and Zoning Commission conducted a public hearing for the purpose of taking public comment regarding the proposed amendments; and

WHEREAS, at the conclusion of the public hearing , the Planning and Zoning Commission made a recommendation to City Council as to the merits of the proposed amendments; and

WHEREAS, on May 12, 2020 City Council conducted a public hearing for the purpose of taking public comment regarding the proposed amendments; and

WHEREAS, The City Council, based on due consideration of the Planning and Zoning Commission recommendation as well as its own deliberations did determine that enacting said Code of Ordinance amendments will serve to promote the public health, safety, morals, and the general welfare of the city and its present and future residents;

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

Section 1. Amendment. The Code of Ordinances, Chapter 118 (entitled “Zoning”) Section 118-20 (entitled “General requirements and limitations”) is hereby amending by adding the language that is underlined (underlined) and deleting the language that is stricken (~~stricken~~) to Chart 1 as follows:.

Chapter 118, Sec. 118-20 – General requirements and limitations—Chart 1 is hereby amended follows.

Chart 1

Zoning District	Front Yard Setback	Side Yard Setback	Street Side Yard Setback	Rear Yard Setback	Min. Lot S.F. Area	Min. Lot Width	Max. Height Limit
R-1	20 ft. for any road over 31 ft. of pavement 25 ft. for roads less than 31 ft.	7½ ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft. for structures over 1,500 s.f. 30 ft. for structures under 1,500 s.f.
R-1 E	30 ft.	15 ft.	15 ft.	15 ft.	1 acre	150 ft.	30 ft.
R-2	25 ft. for two unit 30 ft. for three and four unit	10 ft.	15 ft.	10 ft. 15 ft. when abutting R-1	4,500 s.f. per unit	75 ft.	35 ft.
R-2 A	25 ft. for two connected units 30 ft. for three or four connected units	10 ft. between structures	15 ft.	10 ft. 15 ft. when abutting R-1	4,500 s.f. per unit	75 ft.	35 ft.
R-3	50 ft.	10 ft. and one foot per unit	15 ft.	10 ft. 15 ft. when abutting R1	4,000 s.f. per unit	150 ft.	35 ft.
M-1	20 ft. for any road over 31 ft. of pavement 25 ft. for roads less than 31 ft.	7½ ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft. for structures over 1,500 s.f. 30 ft. for structures under 1,500 s.f.

M-2	50 ft.	10 ft. and one foot per unit	15 ft.	10 ft. 15 ft. when abutting R-1	4,000 s.f. per unit	150 ft.	35 ft.
OS	25 ft.	10 ft.	15 ft.	25 ft.	7,500 s.f.	60 ft.	35 ft.
A	25 ft.	25 ft.	15 ft.	25 ft.	2 Acres	150 ft.	35 ft.
Gov	25 ft.	15 ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft.
NC	20 ft. for any road over 31 ft. of pavement 25 ft. for roads of less than 31 ft.	7½ ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft.
C-1	25 50 ft.	15 ft.	15 ft.	15 ft.	10,000 s.f.	50 ft.	35 ft.
C-2	25 50 ft.	15 ft.	20 ft.	15 ft.	10,000 s.f.	60 ft.	35 ft.
C-3	25 50 ft.	15 ft. for single tenant 25 ft. for multi-tenant	20 ft.	15 ft.	10,000 s.f.	60 ft. for single-tenant 100 ft. for multi-tenant	35 ft.
I-1	25 ft.	25 ft.	25 ft.	25 ft.	10,000 s.f.	50 ft.	60 ft.
I-2	25 ft.	25 ft.	25 ft.	25 ft.	10,000 sf.	60 ft.	60 ft.
PUD	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Section 2. Findings. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. Penalty. A violation of this ordinance is unlawful and subject to City Code of Ordinances Sec. 1-6 (entitled “general penalty”).

Section 4. Cumulative. This ordinance shall be cumulative of all provisions of all ordinances and codes, or parts thereof, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event Section 5, (entitled “Repealer”) shall be controlling.

Section 5. Repealer. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the

extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 6. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 7. TOMA Compliance. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was conducted in compliance with the Texas Open Meeting Act as modified by Executive Orders of the Governor of the State of Texas in response to the COVID-19 pandemic.

Section 8. Publication. The publishers of the City Code are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.

Section 9. Notice. The City Secretary is hereby directed to publish notice of this Ordinance, in substantial form as **Exhibit “A”**, as required by Section 3.14 of the City Charter and the laws of the State of Texas.

Section 10. Effective Date. This Ordinance shall be effective upon the date of final adoption hereof and publication as required by law.

Passed on first reading on the 26th day of May, 2020

Passed and Adopted on the 9th day of June, 2020

CITY OF BURNET

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary

EXHIBIT "A"

PUBLIC NOTICE

IN ACCORDANCE WITH SECTION 3.14 OF THE CHARTER OF THE CITY OF BURNET, TEXAS THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS PROVIDES NOTICE OF THE READING AND ADOPTION OF ORDINANCE NO. 2020-13 AS FOLLOWS:

AN ORDINANCE AMENDING ORDINANCE NO. 2012-06 BY AMENDING CITY OF BURNET CODE OF ORDINANCES, CHAPTER 118 – "ZONING," SECTION 118-20, CHART 1 FOR THE PURPOSE OF REVISING MINIMUM FRONT YARD SETBACKS ESTABLISHED FOR THE LIGHT COMMERCIAL – DISTRICT "C-1", THE MEDIUM COMMERCIAL – DISTRICT "C-2", AND THE HEAVY COMMERCIAL – DISTRICT "C-3" FOR THE PURPOSE OF REDUCING THE FRONT YARD SETBACK TO TWENTY FIVE FEET (25'); PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

VIOLATION OF THE ORDINANCE IS A CLASS "C" MISDEMEANOR AND THE MAXIMUM FINE UPON CONVICTION IS \$2000.00



City Council

ITEM 2.3

Jason Lutz
Development Services
(512) 715-3215
jlutz@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: Discuss and consider action: FIRST READING OF AN ORDINANCE TO REZONE APPROXIMATELY 0.487 ACRES, LEGALLY DESCRIBED AS LOTS 3-A AND 3-B, BLOCK 24, OF THE PETER KERR PORTION OF THE CITY OF BURNET, FROM ITS PRESENT DESIGNATION OF SINGLE-FAMILY RESIDENTIAL—DISTRICT “R-1” TO A DESIGNATION OF TOWNHOMES—DISTRICT “R-2A,” SAID TRACT BEING ADDRESSED AS 2050 EAST POLK STREET (STATE HWY. 29), AND BEING GENERALLY LOCATED AT THE NORTHEAST INTERSECTION OF N. VANDERVEER ST. AND E. POST OAK STREET; PROVIDING A REPEALER CLAUSE; PROVIDING A NON-SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE: J Lutz

Background: The property is located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street. This location is an undeveloped property consisting of two lots, which were recently replatted. The applicant is requesting to up zone the property, from Single Family Residential – District (R-1) to a Townhomes — District (R-2A).

Information: The applicant is proposing to construct a single-family home on lot 3-A and construct a 4 unit townhome structure on lot 3-B.

The proposed zoning category would allow the construction of both projects.

Staff Analysis: Staff has reviewed the proposed zoning request and looked at several factors such as Future Land Use Plan (FLUP), adjacent zoning/land uses, and access.

FLUP: The City’s Comprehensive Plan calls out this parcel as “Residential”. While the comp plan does not differentiate between residential types or intensities of land uses, the requested zoning is in line with the Future Land Use Plan (see Exhibit B below).

Adjacent Zoning/Land Uses: The subject tract is surrounded by R-1 (single-family) zoning along the northern and eastern property lines. The property is bounded to the west and south by city streets with R-1 (single-family) zoning across the streets.

However, there are multiple R-2 zoning districts in the area with including the southwest intersection of the property (see zoning exhibit below).

P&Z Recommendation: P&Z unanimously recommended approval of the request to rezone the property from its present designation of Single Family Residential – District (R-1) to a designation of Townhomes — District (R-2A).

Recommendation: Approve the first reading of Ordinance 2020-12 as presented.

ORDINANCE NO. 2020-12

AN ORDINANCE TO REZONE APPROXIMATELY 0.487 ACRES, LEGALLY DESCRIBED AS LOTS 3-A AND 3-B, BLOCK 24, OF THE PETER KERR PORTION OF THE CITY OF BURNET, FROM ITS PRESENT DESIGNATION OF SINGLE-FAMILY RESIDENTIAL—DISTRICT “R-1” TO A DESIGNATION OF TOWNHOMES—DISTRICT “R-2A,” SAID TRACT BEING ADDRESSED AS 2050 EAST POLK STREET (STATE HWY. 29), AND BEING GENERALLY LOCATED AT THE NORTHEAST INTERSECTION OF N. VANDERVEER ST. AND E. POST OAK STREET; PROVIDING A REPEALER CLAUSE; PROVIDING A NON-SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, The Planning and Zoning Commission of the City of Burnet, on May 4, 2020, did conduct a public hearing for the purpose of taking public comment regarding the proposal to assign Townhomes—District “R-2A” to approximately 0.487 acres legally described as Lots 3-A and 3-B of the Peter Kerr Portion of the city, and being generally located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street; and

WHEREAS, The City Council of the City of Burnet, on May 12, 2020 did conduct its own public hearing for the purpose of taking public comment regarding the proposal to assign Townhomes—District “R-2A” to approximately 0.487 acres legally described as Lots 3-A and 3-B of the Peter Kerr Portion of the city, and being generally located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street; and

WHEREAS, The City Council, based on due consideration of the Planning and Zoning Commission recommendation, and its own findings, did determine that assigning Townhomes—District “R-2A” to approximately 0.487 acres legally described as Lots 3-A and 3-B of the Peter Kerr Portion of the city, and being generally located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street to be consistent with development patterns in the surrounding area and consistent with the best public interest of the City;

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

Section 1. Findings. The foregoing 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. Zoning Changed. Approximately 0.487 acres legally described as Lots 3-A and 3-B of the Peter Kerr Portion of the city, and being generally located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street is hereby assigned a zoning designation of Townhomes—District “R-2A”.

Section 3. Repealer. Other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

Section 4. Severability. This Ordinance is not severable.

Section 5. Effective Date. This ordinance is effective upon final passage and approval.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was conducted in compliance with the Texas Open Meeting Act as modified by Executive Orders of the Governor of the State of Texas in response to the COVID-19 pandemic.

PASSED AND APPROVED on First Reading this 26th day of May, 2020.

FINALLY PASSED AND APPROVED on this 9th day of June, 2020.

CITY OF BURNET, TEXAS

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary



City Council

ITEM 2.4

Tres Clinton
Council Member
830-385-6774
tclinton@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: Discuss and consider action: Rental of a portion of Hangar “D” at Burnet Municipal Airport for a flight school: Council Member Clinton

Background:

Information:

Fiscal Impact: To be determined.

Recommendation: To be determined.



Human Resources Department

ITEM 2.5

Kelli Sames
Director of Human Resources
(512)-715-3213
ksames@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: Discuss and consider action: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 2.14 SUBSTANCE ABUSE OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS: K.Sames

Background: The City of Burnet currently has in effect an Employee Personnel Policy Manual that was adopted by City Council on December 8, 2009 with an effective date of December 8, 2009. Since the original adoption, recommended revisions to the Personnel Policy have occurred from time to time.

Information: The City of Burnet has a longstanding commitment to providing a safe, quality-oriented and productive work environment consistent with the standards of the community. Alcohol and drug abuse pose a threat to the health and safety of employees and others and to the security of department equipment and facilities.

Workplace drug and alcohol testing is used by the City and many employers to screen applicants and employees, in certain circumstances, for illegal or unauthorized drug and alcohol use. For many employers, drug and alcohol testing has become standard practice.

The effects of substance abuse in the workplace can be costly. Costs associated with workplace accidents include lower productivity and increased workers' compensation, liability, and property insurance premiums. Such costs have a financial impact on the City's budget and can also have a negative overall effect on employee morale. An effective substance abuse policy and testing program provides for a safe, productive and secure work environment for all employees and citizens.

While the Substance Abuse policy continues to apply to all

employees and all applicants for employment with the City of Burnet, it has been updated to include two separate policies; one for drivers subject to alcohol and drug testing as required by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration and one for staff not subject to DOT drug and alcohol testing requirements.

- **2.14. Drug and Alcohol Use Policy (NON-DOT)** - Establishes procedures for drug and alcohol testing of employees and applicants for employment in order to promote a drug and alcohol-free work environment.
- **2.15. Drug and Alcohol Policy for DOT Employees** - Establishes the controlled substance abuse and alcohol misuse policies and procedures required by the U.S. Department of Transportation, Federal Highway Administration for all employees in “safety sensitive positions”.

The current and proposed policies are attached as Exhibit A.

Fiscal Impact:

The current FY budget includes budget appropriations for employee drug and alcohol testing.

Recommendation:

City staff recommends approval of Resolution No. 2020-16, updating Personnel Policy No. 2.14 Substance Abuse as presented.

RESOLUTION NO. 2020-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 2.14 SUBSTANCE ABUSE OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS.

Whereas, the City Council believes its personnel policies should reflect the needs of the City and meet all applicable state and federal labor laws; and

Whereas, it is necessary to update, revise, and clarify language in the City of Burnet Personnel Policies consistent with laws, regulations, and industry standard practices; and

Whereas, the City of Burnet has previously adopted Ordinance No. 2009-31, Personnel Policy Manual on December 8, 2009; and

Whereas, the Personnel Policy Manual was last revised on April 28, 2020; and

Whereas, the City Council believes it is in the best interest of the City and its employees to make additional amendments to said Personnel Policy Manual; and

Whereas, The City Council has reviewed the proposed amendments to the Personnel Policy Manual and has determined the need to update and clarify those sections.

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

Section 1. The City Council hereby accepts and adopts the amendment to the Personnel Policy to include sections 2.14. Drug and Alcohol Use Policy (NON-DOT) and 2.15. Drug and Alcohol Policy for DOT Employees (formally titled 2.14 Substance Abuse) as attached hereto as Exhibit "A" with an effective date of May 26, 2020.

Section 2. The findings and recitations set out herein above are 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 3. If any provision of this resolution or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

Section 4. That it is hereby officially found and determined that the meeting at which this resolution is passed was open to the public as required and that public notice

of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this 26th day of May 2020.

CITY OF BURNET, TEXAS

ATTEST:

Crista Goble Bromley, Mayor

Kelly Dix, City Secretary

Exhibit A

Current Policy

2.14 SUBSTANCE ABUSE

1. DEFINITIONS:

Alcohol means any beverage that contains ethyl alcohol (ethanol), including but not limited to beer, wine and distilled spirits.

City Owned Vehicle (COV) is any vehicle or equipment owned or leased by the City of Burnet.

City property or city facilities means all property of the City including, but not limited to, the offices, facilities and surrounding areas on the City-owned or City-leased property, parking lots, and storage areas. The term also includes the City-owned or City-leased vehicles and equipment wherever located.

Contraband means any article, the possession of which on the City premises or while on the City business, causes an employee to be in violation of the City work rule or law. Contraband includes illegal controlled substances and alcoholic beverages, drug paraphernalia, lethal weapons, firearms, explosives, incendiaries, stolen property, counterfeit money, and pornographic materials.

Controlled substance (illegal drug, or drug abuse) means a drug or substance which the use, possession, sale, transfer, attempted sale or transfer, manufacture or storage if it is illegal under any federal, state, or local law or regulation without permit or prescription and includes, but is not limited to inhalants, marijuana, cocaine, narcotics, opiates, opium derivatives, hallucinogens and any other substance having either a stimulant, depressant or hallucinogenic effect on the central nervous system such as amphetamines, barbiturates, lysergic acid or diethylamide.

Drug testing means the scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens of the human body for the purpose of detecting a drug or alcohol.

Impairment is defined as being unable to perform their duties safely and competently due to the use or presence of alcohol or other substances.

Legal drug means any prescribed drug or over-the-counter drug that has been legally obtained and is being used for the purpose for which prescribed or manufactured.

Illegal use of a legal drug shall mean any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level other than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with bona fide medical therapy (herein "illegal drug").

Reasonable belief (reasonable suspicion) means a belief based on objective facts sufficient to lead a prudent person to conclude that a particular employee is unable to satisfactorily perform his or her job duties due to drug or alcohol impairment. Such inability to perform may include, but not be limited to, decreases in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable belief" situations.

Regulated drivers (or herein "drivers") means those drivers who are subject to the U.S. Department of Transportation regulations as defined by the DOT. Applicable regulations include but are not limited to DOT, Federal Highway Administration and Federal Motor Carrier Safety Administration regulations.

Safety sensitive function means a full-time, part-time, or temporary position with the City requiring any activity that presents a threat to the health or safety of the employee, other city employees, or the public. An employee is considered to be performing a safety-sensitive function during any period in which (s)he is actually performing, is ready to perform, has just completed performing, or is immediately available to perform any safety-sensitive function. These may include but are not limited to:

- All time waiting to be dispatched to drive a COV or equipment.
- All time inspecting or servicing a COV or equipment.
- All time spent driving a COV or equipment.
- All time, other than driving time, spent on or in a COV or equipment.
- All time loading or unloading a COV or equipment.
- All time repairing or remaining in attendance upon a disabled COV or equipment.
- Any activity that places the employee or others in jeopardy.

Substance Abuse Professional (SAP) means a licensed physician (MD or DO), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (NAACACCC certified) with knowledge of an clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Under the influence means a condition in which a person is affected by the voluntary introduction of any amount of a controlled substance or alcohol at/or above the limit as set by the U.S. Department of Transportation in the Omnibus Transportation Employee Testing Act of 1991.

B. GENERAL

I. Purpose: It is the policy of the City of Burnet to maintain a work environment free from the use, possession, and effect of the illegal use of controlled substances. The City of Burnet recognizes that drugs and alcohol may impair employee judgment, which may result in increased safety risks, hazards to the public, employee injuries, faulty decision-making, and reduced productivity. Therefore, the City of Burnet expects all employees to be in a state of mind and physical condition fit to complete their assigned duties safely and competently during working hours.

II. Pre-Placement: In order to maintain a safe and drug free environment for its employees, the City of Burnet will not knowingly hire applicants who engage in substance abuse. Please refer to Chapter 11, Subsection 11.02 for information regarding this policy.

III. Current Employees: The following conduct by employees of the City is prohibited and will result in appropriate action by the City.

(a) Controlled Substances and Alcohol. Committing any of the prohibited acts listed below constitutes serious misconduct not requiring any previous disciplinary actions and will result in immediate removal from the work place where applicable, and termination from employment when such activities occur while on City property, in City supplied vehicles, during working hours or at any time while the employee is on a City work site or while representing the City on official City business.

- (1) The sale, manufacture, dispensation, possession, distribution, or being under the influence of an illegal controlled substances or drug paraphernalia by an employee.
- (2) The sale, manufacture, dispensation, unlawful possession, distribution or abuse of legal drugs.
- (3) Being under the influence of alcohol not in a social setting.
- (4) The prohibition against possession shall not apply to paraphernalia or drugs held as evidence under authority of the Chief of Police.

Any employee who is arrested for a drug related crime under a criminal drug statute for violations occurring on or off City property must immediately report the arrest to their supervisor. Failure to report the arrest will result in disciplinary action.

All employees who are using a legal drug which may in any way impact or impair their job performance must notify their supervisor in writing as to the possible effects of such medication on the performance of their assigned duties and related physical capability. The Department Director may require a doctor's statement if the employee indicates that

there is a need to use the prescription for an extended period or if the employee's performance is or can be impaired. (See medical exception below).

IV. Medical Exception: Exceptions to this chapter may be made for employees who are reasonably suspected of being under the influence and impaired by medication taken according to a prescription in the employee's name obtained from a licensed physician for medical purposes. Such individuals may be placed in an assignment consistent with their ability to perform the assigned task or will be removed from the workplace and be allowed to use their accumulated sick or vacation leave until they are able to return to work.

V. Reasonable Suspicion Tests: The City may conduct unannounced searches or inspections where there is reasonable suspicion of being under the influence of alcohol or controlled substances. These may include, but are not limited to, employee personal effects including requiring the employee to empty the contents of pockets, lunchboxes, purses, briefcases, containers, and desks located on City property, in work sites, and in City owned vehicles. A supervisor who has reasonable suspicion of possession of a controlled substance or illegal contraband in an employee's private vehicle on City property should first obtain a written consent to search. Should the individual in control of the vehicle refuse to give his consent to search, the Burnet Police Department may be contacted to obtain a search warrant.

When a department supervisor has reason to believe that an employee at work, or when reporting to work, appears to be impaired from alcohol or drugs, the supervisor shall notify his/her department head, the Director of Personnel, or the City Manager or his/her designee for confirmation of testing. The employee will be required to take a drug/alcohol test. Observations which constitute a factual basis for determining reasonable suspicion may include, but are not limited to:

- Odor of alcoholic beverages
- Erratic behavior
- Violent mood swings
- A medical emergency that can be attributed to drug use
- Physical on-the-job evidence of drug use
- Documented deterioration in the employee's job performance, or an accident which is caused by the apparent action or interaction of the employee
- Other reasonable indication of alcohol use.

The department supervisor will describe the incident in writing, documenting the circumstances leading to the conclusion that a drug or alcohol test is necessary. Such documentation will include the date, time, place, description of incident, and statement of witnesses. Any other evidence such as drugs, drug paraphernalia, containers, etc., will be collected. After documenting the incident, the department supervisor will contact the City Manager, or his designee, to determine if drug testing is appropriate and to arrange for testing.

If drug testing is appropriate, the designated City personnel will transport the employee to the drug specimen collection facility. The type of drug/alcohol test may be based on urine, blood, or other type of sample as appropriate. After testing, the employee will be transported home by the supervisor or by a relative. The employee shall not return to work until the results of the test are known. If the employee is incapacitated, in need of immediate medical attention, or if, in the opinion of the supervisor, poses a threat to himself or others, the police department and/or the Fire/EMS will be summoned.

VI. Random Test - Safety sensitive personnel are subject to random drug/alcohol testing in order to prevent drug and alcohol abuse while on duty. Names will be drawn in accordance with state, local and federal law. Employees on previously approved leave are not required to return to work for testing. Employees will be taken to the drug testing sample collection facility to give urine, blood, or another appropriate sample. Employees are required to sign a consent form (aka Chain of Custody Form). Refusal to sign the consent form will be considered insubordination subject to immediate termination.

VII. Post-Accident Test – After any on-the-job accident where more than minor first aid is required, employees involved shall be tested for controlled substances. In accidents involving City Owned Vehicle(s), the employee(s) involved shall be tested for controlled substances. Employee(s) must submit a sample within two (2) hours of the accident or incident.

VIII. Refusal to Submit - If an employee refuses to submit to the testing that is outlined in this policy statement or engages in conduct that clearly obstructs the testing process, such refusal or obstruction, shall be considered as a insubordination subject to immediate termination. If an employee fails to provide an adequate breath or urine sample when required to do so and a physician cannot determine a valid medical reason why such samples cannot be provided, the employee will have refused to submit to required testing.

IX. Withholding Information – Employees who knowingly withhold personal knowledge that another employee is impaired on the job is subject to disciplinary action.

X. Switching or Altering Samples – Switching or altering samples is strictly prohibited and the employee shall be considered as insubordination subject to immediate termination. Any employee facilitating, directing, or aiding in this behavior is also subject to disciplinary action.

XI. Consequences of testing positive –If an employee fails a controlled substance or alcohol test, the employee shall be immediately terminated. Disciplinary action based on a violation of this drug and alcohol policy is not suspended by an employee's participation in an abuse program after a confirmation the employee has been under the influence of drugs or alcohol while on duty.

An employee who is terminated for failing a substance or alcohol test is not eligible for rehire until one year has passed and they can demonstrate that they have completed an

Employee Assistance Program (EAP) equal in scope and gravity to the SAP Return to Duty Program noted in *Section C.III.(f)* below. The city is not responsible for any costs associated with the EAP process. The City is under no obligation to rehire any employee after termination for violation of this policy. Rehires under this section will be subject to regular and periodic testing in accordance with this policy, and federal and state law.

C. COMPLIANCE WITH DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL REQUIREMENTS:

I. Policy: The City of Burnet will comply with the Federal Highway Administration and Department of Transportation rules requiring drivers who drive COVs to submit to drug and alcohol testing where applicable. In compliance with these rules, Regulated Drivers must also submit to the Federal Highway Administration's drug and alcohol testing guidelines. Regulated Drivers are those who fall within the following criteria:

- ALL DRIVERS OF VEHICLES WITH GROSS COMBINED WEIGHT RATING OVER 26,000 POUNDS.
- ALL DRIVERS OF VEHICLES DESIGNED TO CARRY OVER 15 PASSENGERS.
- ALL DRIVERS TRANSPORTING HAZARDOUS MATERIALS.
- SAFETY SENSITIVE PERSONNEL
- FIRE/EMS AND POLICE PERSONNEL

The City expects drivers that drive COV's to report to work ready to drive motor vehicles at any point during their workday. This includes drivers that are expected to backup or substitute for a driver in his/her absence. Therefore, the City expects all drivers to be capable of performing the safety-sensitive function of driving a motor vehicle when they report to work. Such drivers will continue to be expected to drive vehicles until their workday is over.

Because drivers can be expected to drive at any time during their workday, they are also subject to testing at any time during the shift as prescribed by this policy statement.

II. Controlled Substances:

a) Prohibited conduct:

Drivers may not report for duty or remain on duty when they are under the influence, use, or possess any controlled substance, except when a physician has prescribed a substance and has advised the driver, in writing, that it will not affect his/her ability to operate a commercial motor vehicle safely. Also, drivers are prohibited from using or being under the influence of any other substance that renders the driver incapable of safely operating a motor vehicle.

b) Circumstances for testing:

Pre-Employment

Prior to the first time that a driver operates a COV, that driver must be tested for alcohol and controlled substances. Other employees that transfer into a position that requires a commercial driver's license, must also be tested as well.

Post-Accident

After any on-the-job accident where more than minor first aid is required, or any accident involving the use of City owned equipment or vehicle(s), the employee(s) involved shall be tested for controlled substances. Employee(s) must submit a sample within two (2) hours of the accident or incident. After a vehicle accident, all injured parties, including the driver, should receive the appropriate medical treatment as soon as possible. If a driver is physically capable of reporting an accident, (s)he should do so as soon as possible.

Random

The City of Burnet will comply with the Federal Highway Administration's random testing requirements for Regulated Drivers which dictates that random drug tests will take place at least quarterly at the rate of at least fifty percent (50%) of the average number of Commercial Driver positions annually. For instance, if there are six (6) regulated drivers, three (3) or more drivers will be selected for random drug testing each year.

Drivers should understand that if (s)he was selected for a random test during one test period, (s)he is just as likely to be tested during the next test period. It is conceivable that out of eight (8) drivers, one driver, the same driver, would be selected four (4) times in a year to be tested, and the other drivers would not be selected at all.

Drivers as a condition of the position required to drive COV's and do actually drive COV's are subject to random testing in order to prevent drug and alcohol abuse while on duty. Employees will be asked to sign consent forms and will be taken to the drug testing sample collection facility to give urine, blood, or another appropriate sample. Refusal to sign the substance abuse consent form will be considered as insubordination subject to immediate termination.

Reasonable Suspicion

If there is reasonable suspicion that a driver has violated the alcohol or controlled substance rules, the driver must be tested. A supervisor charged with making a "reasonable suspicion" must base the determination on specific observations concerning the appearance, behavior, speech, or body odors of the driver. *Such suspicion should be based only on what is observed during, just preceding, or just after the period of the workday that a commercial driver is performing driving functions.*

The Federal Highway Administration rules require that supervisors make a written and signed record of their observations on which they based their reasonable suspicion for

controlled substances. This written record must be made within twenty-four (24) hours of the observations and before the release of the controlled substance results.

If the employer does not perform testing for controlled substances within thirty-two (32) hours of determining that a reasonable suspicion exists, the employer shall prepare and maintain a file on why such testing was not properly administered.

c) Testing procedures:

When the driver is told that (s)he has been selected for testing as required by the DOT and the Federal Highway Administration and described in the policy statement, the driver will be driven to the collection site. The driver shall carry an identification card with his/her photograph so (s)he can be positively identified.

The collection site personnel will initiate the chain of custody form, which is required by the Federal Highway Administration. The driver will be required to urinate the required amount called for under the Federal Highway Administration rules. The collection site personnel will receive the urine sample from the driver, and, in the presence of the driver, place the required amount of the sample in two (2) containers, again in the presence of the driver with a copy of the chain of custody form that will be sent along with the sample to the designated lab.

In the event the driver cannot produce a sample within two (2) hours, (s)he will be examined by a physician to determine if there is a medical reason why a sample cannot be obtained. If no medical reason exists, the failure to produce a specimen will be considered a refusal to submit to testing.

The driver's sample will be sent in its sealed container to a testing laboratory that has been approved by the Department of Health and Human Services.

If a sample initially tests positive, the lab must verify this positive test by using a testing procedure of greater accuracy or reliability where available. If the initial test is the most accurate available that test shall be repeated.

If a sample tests positive, a medical review officer will interview and/or examine the driver to determine if there is a reason for a positive test. If there is a valid medical reason for the positive result, the City will not be informed of the positive test result. However, if there is not a valid medical reason, the positive result will be reported.

Consequences of testing positive:

If a driver fails a controlled substance or alcohol test, or the driver violates the Federal Highway Administration alcohol or controlled substance rules and regulations as outlined in this policy statement, the driver will be immediately terminated.

A regulated driver who is terminated for failing a substance or alcohol test is not eligible for rehire until they can demonstrate that they have received an evaluation by a Substance Abuse Professional (SAP) and have completed the return to duty process.

recommended by the SAP. The city is not responsible for any costs associated with the SAP process. The City is under no obligation to rehire any employee after termination for violation of this policy. Rehires under this section will be subject to regular and periodic testing in accordance with federal and state law.

Refusal to test shall be considered as insubordination and subject to immediate termination.

III. Alcohol:

a) Prohibited Conduct:

The following are prohibited uses of alcohol.

- Use of alcohol on the job or while on-call
- Use during the four (4) hours before the performance of a safety-sensitive functions.
- Being under the influence of alcohol while performing safety-sensitive functions.
- Use of alcohol within eight (8) hours following an accident involving a covered employee or until the covered employee undergoes a post-accident test (whichever comes first).
- Refusal to submit to a required test.

b) Circumstances for testing:

Post-Accident

After a vehicle accident, all injured parties, including the COV driver, should receive the appropriate medical treatment as soon as possible. If a driver is physically capable of reporting an accident, (s)he should do so as soon as possible. *If the driver was driving a COV* at the time of an accident, there were injuries or a fatality as a result of the accident, regardless if any citations were issued, the driver will be tested for the presence of alcohol. Accidents involving the use of City owned equipment shall also require the employee(s) involved be tested for alcohol.

Random

The City of Burnet will comply with Federal Highway Administration's random testing requirements for regulated drivers which dictate that random tests will take place at least quarterly at a rate of at least twenty-five percent (25%) of the average number of driver positions annually. Regulated drivers should understand that if (s)he was selected for a random test during one test period, (s)he is just as likely to be tested during the next test period. It is conceivable that out of eight (8) drivers, one driver, the same driver, would be selected four (4) times in a year to be tested, and the other drivers would not be selected at all.

Drivers of all non-regulated COV's are subject to random testing in order to prevent drug and alcohol abuse while on duty. Employees will be asked to sign consent forms and will

either be taken to the drug testing sample collection facility to give urine, blood, or other appropriate sample or asked to report to the location. Refusal to sign the substance abuse consent form may result in termination. If in the event a second test is required and the second test is also positive, the employee will be terminated immediately.

Reasonable Suspicion

If there is a reasonable suspicion that a COV driver has violated alcohol rules, the driver must be tested. A supervisor charged with making a "reasonable suspicion" must base his determination on specific observations concerning the appearance, behavior, speech, or body odors of the driver. Such suspicion should be based only on what is observed during, just preceding, or just after the period of the workday that a COV driver is performing safety-sensitive functions.

The Federal Highway Administration rules require that supervisors make a written and signed record of their observations on which they based their reasonable suspicion for alcohol. This written record must be made within twenty-four (24) hours of the observations and before the release of the alcohol test results.

If the employer does not request the testing within two (2) hours of determining a reasonable suspicion exists, the employer shall prepare and maintain a file on why such testing was not promptly administered. If the test is not administered within eight (8) hours, the supervisor shall cease attempts to administer the test, and prepare and maintain a written record described above.

c) Testing procedures:

For alcohol testing, the current testing rate is twenty-five percent (25%). The City of Burnet may test at a higher percentage in order to protect the safety of employees and the community.

Federal Highway Administration rules dictate that a driver may only be randomly tested for alcohol while performing, just before or just after performing safety-sensitive functions, or just before or after performing these functions. The City of Burnet will randomly test for alcohol in compliance with these rules.

Similar to the testing procedure for controlled substances, when a driver has been told (s)he has been selected for random alcohol test, as required by Federal Highway Administration rules described in the policy statement, the driver will be taken to the testing site. The driver shall carry an identification card with him/her so that (s)he can be positively identified.

When a driver is to be tested for the presence of alcohol in the system, (s)he will be required to be tested by a method approved by the Federal Highway Administration. Only those persons who have received training as a Breath Alcohol Technician will administer and monitor such breath alcohol tests.

In the event a Breath Analyzer Test is used, the Breath Analyzer Technician will review the procedure to be used for administering the breath tests. The driver will be allowed, and is encouraged, to watch as the Evidential Breath Analyzer is prepared for the test. The machine will perform a self-diagnosis. The Breath Analyzer Technician will provide a new mouthpiece for the test, which will be enclosed in a plastic wrapper and be unwrapped in the driver's presence. The driver will then be expected to blow forcefully into the mouthpiece attached to the tube leading to the Evidential Breath Analyzer. Within a few minutes, the Evidential Breath Analyzer will produce the results of the alcohol analysis of the driver's breath. These results will be presented to the driver. If the driver is unable to provide an adequate amount of breath, (s)he will be examined by a physician to determine if there is a medical reason why a sample cannot be obtained.

In the event that the driver's breath tests greater than .02 alcohol level, a second confirming test will be conducted. While waiting for the confirming test, which will take place no sooner than fifteen (15) minutes and no later than twenty (20) minutes after the initial test, the driver should follow the instructions of the Breath Analyzer Technician and should refrain from putting anything in his/her mouth. At the completion of the confirming test, if the driver registers below .02 alcohol level, the driver's results will be reported as negative. If the confirming test shows an alcohol level greater than .02, the driver will not be permitted to drive. The driver should not drive away from the testing site, his/her supervisor will arrange for transportation back from the testing site and the driver will be placed on leave without pay before disciplinary action is administered.

d) Refusal to submit:

If a driver refuses to submit to the Federal Highway Administration alcohol and controlled substance testing that are outlined in this policy statement or engages in conduct that clearly obstructs the testing process, the driver will have refused to submit to Federal Highway Administration required testing.

If a driver fails to provide an adequate breath or urine sample when required to do so under the Federal Highway Administration rules outlined in this policy statement and a physician cannot determine a valid medical reason why such samples cannot be provided, the driver will have refused to submit to required testing.

When a driver refuses to submit to Federal Highway Administration alcohol or drug testing, (s)he will be immediately terminated.

NOTE: A driver that refuses to submit to a post-accident test following a fatal accident is subject to Federal Highway Administration disqualification to drive commercial motor vehicles for one (1) year.

e) Withholding Information – Employees who knowingly withhold personal knowledge that another employee is impaired on the job is subject to disciplinary action.

f) Consequences of testing positive:

If a driver fails a controlled substance or alcohol test, the driver violates the Federal Highway Administration alcohol or controlled substance rules, as outlined in this policy statement, and the driver will be immediately terminated.

A regulated driver who is terminated for failing a substance or alcohol test is not eligible for rehire for one year and must be able to demonstrate that they have received an evaluation by a Substance Abuse Professional (SAP) and have completed the Return to Duty Process recommended by the SAP. The city is not responsible for any costs associated with the SAP process. The City is under no obligation to rehire any employee after termination for violation of this policy. Rehires under this section will be subject to regular and periodic testing in accordance with this policy, and federal and state law.

Refusal to test shall be considered as insubordination subject to immediate termination.

IV. Medical Exception: Exceptions to this chapter will be made for employees who are reasonably suspected of being under the influence and impaired by medication taken according to a prescription in the employee's name obtained from a licensed physician for medical purposes. Such individuals may be placed in an assignment consistent with their ability to perform the assigned task or will be removed from the workplace and be allowed to use their accumulated sick or vacation leave until they are able to return to work.

Exhibit A Proposed Policy

DRUG AND ALCOHOL USE POLICY (NON-DOT) (Revised 5-26-2020 Resolution 2020-)**

It is the desire of the City to provide an alcohol and drug-free, healthful, and safe workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory and safe manner.

Prohibition Against Alcohol and Illegal and Unauthorized Drugs. While on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment, no employee may use, possess, distribute, sell, or be under the influence of alcohol (except under the limited circumstances described below), inhalants, illegal drugs, including drugs which are legally obtainable but which were not legally obtained, and prescribed or over-the-counter drugs which are not being used as prescribed or as intended by the manufacturer.

The use of alcohol by a City employee during a business lunch is prohibited even though the person with whom the employee is having lunch may be consuming alcohol. Further, an employee on duty or conducting City business, including City-related business entertainment, may not drive his or her own personal vehicle while under the influence of alcohol. No employee in his or her work-related capacity should ever be impaired because of the excessive use of alcohol. City employees, while on duty, may not bring alcoholic beverages on City premises, and may not store or transport alcohol in a City-owned or leased vehicle. If an employee receives a gift of alcohol (example – recognition for retirement, birthday, holiday) they will not be in violation of this policy if the gift remains unopened and is taken off premises at the end of the employee's shift.

Employees attending training and conferences may participate in social functions associated with the conference. This includes the consumption of alcohol, so long as the employee's conduct does not reflect adversely upon the City. Employees who consume alcohol at these functions will not operate a City owned or rented vehicle.

Prohibition Against Illegal and Unauthorized Drug-Related Paraphernalia. This policy also prohibits the use, possession, distribution and sale of drug-related paraphernalia while on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment. Drug-related paraphernalia includes material and/or equipment designed for use in testing, packaging, storing, injecting, ingesting, inhaling or otherwise introducing illegal or unauthorized drugs into the body.

Permissive Use of Prescribed and Over-The-Counter Drugs. The legal use of prescribed medication taken according to a prescription legal in the State obtained in the employee's name and over-the-counter drugs is permitted while on City premises, while on duty, while conducting City-related business or other activities off premises, while

driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment only if it does not impair an employee's ability to perform the essential functions of the job (or operate the vehicle, property or other equipment) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.

The City of Burnet reserves the right at all times to judge the effect that a legal drug, including medications not requiring a prescription, may have upon an employee's work performance and to restrict the employee's work activity or presence at the workplace accordingly. The City also reserves the right to have a physician of its choice determine whether a medication at the prescribed or recommended dosage impairs or adversely affects the employee's work activity. For Police and Fire Department personnel, all prescription medication for must be reported to the Fire Chief or Police Chief.

Public Safety Department Employees. Certain Public Safety Department employees may be required to be in possession of alcohol and/or drugs in carrying out their job duties. Such employees will be exempted from certain portions of this policy under certain limited conditions. Additional guidelines may be established by Police and Fire Department operating procedures.

Mandatory Disclosure by Employees. Employees taking prescription medication and/or over-the-counter medication must report such use to the Human Resources Director if there is a reasonable likelihood the medication will impair the employee's ability to perform the essential functions of his or her job (or operate a vehicle, property or other equipment, if applicable) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, slurred speech, drowsiness, dizziness, confusion, or feeling shaky.

On-Call Employees. Employees scheduled to be on call are expected to be fit for duty upon reporting to work. Any employee scheduled to be on call, and is called out, is governed by this policy. Sometimes, an employee who is not scheduled to be on call may nevertheless be called out. If this or any other situation occurs where the employee called out is under the influence of alcohol or has a presence in the system of drugs, such that reporting to work would result in a violation of this policy, the employee must so advise the appropriate supervisor on duty. The employee shall not report to work.

Mandatory Reporting of Arrests and Convictions. Employees must notify the Human Resources Director, in writing, of any alcohol or drug-related arrest and/or convictions (including a plea of *nolo contendere*) or deferred adjudication, for a violation occurring off duty and/or in the workplace no later than twenty-four (24) hours after the arrest and/or conviction.

Off-Duty Conduct. The City may take disciplinary action, up to and including termination of employment, if an employee's off-duty use of or involvement with drugs or alcohol is damaging to the City's reputation or business, is inconsistent with the employee's job

duties, or when such off-duty use or involvement adversely affects the employee's job performance. Any employee reporting to work under the influence of illegal drugs or alcohol (.02 bac or higher) may be disciplined, up to and including termination.

Rehabilitation/Treatment.

It is the City's desire to assist employees who voluntarily request assistance with alcohol or drug dependency. For City support and assistance, however, an employee must acknowledge the problem and seek and accept counseling and/or rehabilitation before it impairs job performance and/or jeopardizes the employee's employment.

Employees with drug or alcohol problems that have not resulted in, and are not the immediate subject of, disciplinary action may request approval to take a leave of absence to participate in a rehabilitation or treatment program. (An employee may not enroll in a rehabilitation or treatment program in lieu of disciplinary action.) The leave of absence may be granted in the City's sole discretion. Factors considered by the City in deciding whether to grant leave include: the length of the employee's employment with the City; the employee's prior work and disciplinary history; the employee's agreement to abstain from the use of the problem substance and follow all other requirements of the rehabilitation/treatment program; the employee's compliance with City policies, rules, and prohibitions relating to conduct in the workplace; and the resulting hardship on the City due to the employee's absence.

The cost of any rehabilitation or treatment may be covered under the City's group health insurance policy. In any case, the employee is responsible for all costs associated with any rehabilitation or treatment program.

During time off for a City-approved rehabilitation or treatment program, the employee must use any available vacation leave, sick leave, compensatory time off, or other accrued paid leave time.

If the employee successfully completes the prescribed rehabilitation or treatment, the City will make reasonable efforts to return the employee to the prior position or one of similar pay and status. However, employment with the City following a City-approved leave for rehabilitation or treatment is conditioned on the following:

- Initial negative test for drugs and/or alcohol before returning to work.
- A written release to return to work from the rehabilitation or treatment facility/program.
- Periodic and timely confirmation of the employee's on-going cooperation and successful participation in any follow-up or ongoing counseling, testing, or other treatment required in connection with the City-approved rehabilitation or treatment program, if applicable.
- In addition to any testing required in connection with the employee's ongoing treatment or follow-up to treatment, all employees who participate in rehabilitation or treatment under this section will also be required to submit to periodic and/or

random testing by the City during the two years following the employee's return to work following treatment.

- The employee must sign a formal written agreement to abide by the above conditions, as well as any other conditions deemed appropriate by the City. The employee must meet with the Director of Human Resources to discuss the terms of continued employment and sign a formal agreement before returning to work.

Policy Violations. Violations of this policy will generally lead to disciplinary action, up to and including immediate termination of employment and/or required participation in a substance abuse rehabilitation or treatment program. The Police and Fire Departments may have stricter disciplinary rules regarding violation of this policy. Employees with questions or concerns about substance dependency or abuse are encouraged to discuss these matters with the Director of Human Resources to receive assistance or referrals to appropriate resources in the community.

TESTING

Types of Tests. Testing may include one or more of the following: urinalysis, hair testing, breathalyzer, Intoxilyzer, blood, or other generally accepted testing procedure.

Testing of Applicants.

All applicants to whom a conditional offer of employment has been made will be required to submit to testing for alcohol and illegal and unauthorized drugs. A positive test result, refusal to test, or attempts to alter or tamper with a sample or any other part of the test, will render the applicant ineligible for consideration of employment or future employment with the City.

Employees transferring to a new job within the City must undergo testing for alcohol and illegal and unauthorized drugs before the transfer. A positive test result, refusal to test, or attempts to alter or tamper with a sample or any other part of the test, will render the applicant ineligible for consideration of the transfer or future employment with the City.

Testing of Employees.

- If a delay in reporting to the testing facility is unjustified or unreasonable, the employee may be subject to corrective actions, up to and including immediate separation from employment.
- The City may conduct random testing on employees holding safety-sensitive positions.
- Police and Fire Department employees are also subject to any applicable Departmental rules and regulations regarding illegal and unauthorized drug and alcohol testing.
- Tests will be paid for by the City.
- To the extent possible, testing will normally be done during the employee's normal work time.

- Any employee who refuses to be tested, or who attempts to alter or tamper with a sample or any other part of the testing process, will be subject to disciplinary action up to and including termination.
- A positive test result is a violation of the City's Drug and Alcohol Use Policy and may result in disciplinary action up to and including termination of employment. Any employee who is terminated for violation of the City's Drug and Alcohol Use Policy is ineligible for future employment with the City.
- The City has additional obligations when testing for controlled substances and alcohol for those employees regulated by the U.S. Department of Transportation. See the City's Drug and Alcohol Policy for DOT Employees for additional information.

On-the-Job Incident/Accident Testing.

Where there is an "At-Fault" incident/accident causing a fatality, an injury to the employee or to another, significant property damage, involves unusual circumstances, or the driver is issued a moving traffic citation the employee must submit to a drug and alcohol test immediately after the incident/accident. "At-Fault" incidents/accidents will subject the employee to corrective disciplinary action, up to and including immediate separation from employment.

An employee subject to post-accident drug and alcohol testing should be tested as soon as possible following an incident/accident, no more than two (2) hours of the incident/accident if possible. Testing may be delayed for the employee to call for emergency assistance, render aid to others involved in the accident, or to receive medical attention for injuries resulting from the accident. If a drug and alcohol test is not administered within 2 hours of the incident/accident, the supervisor shall document the reasons why.

Use of Law Enforcement Tests. In post-accident situations, the City of Burnet reserves the option to substitute a breath alcohol test performed by local law enforcement officials, using procedures required by their jurisdictions, providing such test results are received directly from the local jurisdiction or the driver. If the City substitutes a breath alcohol test by law enforcement in lieu of other procedures described herein for a post-accident test, it may rely on and take appropriate action based on the results. An employee may elect to provide a blood sample under this section of the policy.

Random Testing.

All employees occupying safety-sensitive positions will be subject to random testing for drugs and/or alcohol. The Human Resources Department will maintain a list of safety-sensitive positions subject to testing and will manage the random testing process.

The random selection process will be completely objective and anonymous and will utilize a scientifically valid method such as random number table or computer-based random

number generator matched with employees' social security numbers, payroll identification numbers, facility number or other comparable identifying numbers. The test will be unannounced, and the dates for testing will be reasonably spread throughout the year. All employees in roles which may include safety-sensitive functions will have an equal chance of being tested at any time, regardless of the number of his/her previous selections.

Any employee notified of his/her selection for random alcohol and/controlled substances testing will be expected to proceed to the test site immediately.

Reasonable Cause Testing.

For purposes of this policy, reasonable suspicion is a belief based on articulable observations (e.g., observation of alcohol or drug use, apparent physical state of impairment, incoherent mental state, changes in personal behavior that are otherwise unexplainable, deteriorating work performance that is not attributable to other factors, a work-related accident or injury, evidence of possession of substances or objects which appear to be illegal or unauthorized drugs or drug paraphernalia) sufficient to lead a supervisor to suspect that the employee is under the influence of illegal or unauthorized drugs or alcohol. Supervisors who refer an employee for reasonable suspicion testing must document the specific factors that support reasonable suspicion testing (e.g., the who, what, when, where of the employee's behavior and other symptoms, statements from other employees or third parties, and other evidence supporting the reasonable suspicion testing). Testing should be arranged as soon as possible after the supervisor's articulable observations.

Testing Procedures.

- All testing must normally be authorized in advance by the employee's Department Director or the Director of Human Resources.
- All substance abuse testing will be performed by an approved laboratory or healthcare provider chosen by the City. All positive test results will be subject to confirmation testing.
- Test results will be maintained in a confidential file separate and apart from the employee's personnel file. Any medical-related information will be confidential and accessible only by the Director of Human Resources; supervisors and managers on a need to know basis, including those who have a need to know about necessary restrictions on the work or duties of an employee and any necessary accommodation; first aid and safety personnel when appropriate; government officials; insurance companies as may be necessary to provide health or life insurance to employees; by court order or as otherwise legally mandated; and as necessary to protect the interests of the City.

Exhibit A Proposed Policy

DRUG AND ALCOHOL POLICY FOR DOT EMPLOYEES (Revised 5-26-2020 Resolution 2020-)**

Employees/Applicants Subject to Testing. City employees who drive a commercial motor vehicle (CMV) requiring a Commercial Driver's License (CDL) as part of their job duties are subject to alcohol and drug testing as required by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration and as outlined in this policy. The employee's supervisor or the Director of Human Resources will advise the employee if the employee is subject to DOT testing and the terms of this policy. Employees who are not required by DOT to hold a CDL are not subject to this policy. Applicants for employment for a position requiring a CDL are also subject to testing under this policy.

Employees covered by this policy are also required to comply with the City's Drug and Alcohol Use Policy. In other words, this DOT Drug and Alcohol Policy is in addition to, not in lieu of, the provisions of the City's general Drug and Alcohol Use Policy. DOT tests will be separate from non-DOT tests in all respects. DOT tests take priority and will be conducted and completed before a non-DOT test is begun. All drug and alcohol testing performed under this DOT Policy will comply with applicable DOT procedures. If this policy conflicts with DOT regulations in any way, the DOT regulations will govern.

Employees who hold these jobs are required to carry their CDLs when they are at work or are operating City equipment.

Prohibited Alcohol Use.

On-duty and Pre-duty Use. Reporting for, or remaining on, duty requiring the performance of safety-sensitive functions is prohibited under the following conditions:

- While having a breath alcohol concentration of 0.04 or more as indicated via breath test;
- While using alcohol; or
- Within 4 hours after using alcohol.

Use Following an Accident. An employee required to take a post-accident alcohol test pursuant to this policy is prohibited from using alcohol for 8 hours following the accident, or until undergoing a post-accident alcohol test, whichever occurs first.

Prohibited Drug Use. Illicit use of drugs by safety sensitive drivers is prohibited both on and off duty. An employee may not report for duty or remain on duty when using or after use of any controlled substances, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a CMV. An employee may not report for duty, remain on duty or perform a safety sensitive function if the employee tests

positive for controlled substances or has adulterated or substituted a test specimen.

Required Alcohol and Drug Tests. DOT requires the following testing for covered drivers: pre-employment, post-accident, random, reasonable suspicion, return-to-duty and follow-up testing. Before conducting any required DOT testing, the City will notify the driver that the alcohol or drug test is required by DOT regulations.

Pre-employment Testing. Drug and alcohol tests will be conducted after a conditional offer of employment is made. These tests are also required when employees are promoted, demoted or transferred into a safety sensitive driver position.

Post-accident Testing. Drug and alcohol tests will be conducted after accidents in which the driver's performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents even if the driver is not cited for a moving traffic violation. Post-accident testing must be conducted as soon as practicable on all surviving drivers following an occurrence involving a CMV operating on a public road in commerce, as follows:

- When the employee is issued a moving traffic violation citation and one or more of the vehicles involved is disabled and must be towed from the scene.
- When the employee is issued a moving traffic violation citation and any person involved in the accident is injured to the extent that he/she requires and receives immediate medical treatment away from the scene of the accident. or
- In an accident involving a fatality, testing will be performed on anyone who was performing safety sensitive functions with respect to the vehicle.

An employee subject to post-accident testing must remain readily available for such testing or will be deemed by the City to have refused to test. Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

In post-accident situations, the City may substitute a blood or breath alcohol test for a urine drug test, so long as the test is performed by state or local law enforcement officials using procedures required by their jurisdictions, provided such test results are received directly from the local jurisdiction or the driver. A positive post-accident test administered by law enforcement will result in the same action as a positive post-accident test performed at the City's behest.

- **Post-Accident Alcohol Testing.** If alcohol testing cannot be administered within 2 hours of one of the above listed occurrences, a written statement explaining why the alcohol test was not promptly administered must be provided to the Director of Human Resources by the appropriate supervisor. If alcohol testing cannot be administered within 8 hours after the occurrence, the City will cease attempts to administer an alcohol test and document the

reasons the alcohol test was not administered. This report must be promptly forwarded to the Director of Human Resources.

- **Post-Accident Drug Testing.** A driver will be drug tested as soon as practicable but not later than 32 hours after one of the above listed occurrences. If the driver is not drug tested within 32 hours, the appropriate supervisor must prepare a report documenting the reason why and promptly forward the report to the Director of Human Resources.

Reasonable Suspicion Testing. Reasonable suspicion drug and alcohol testing is conducted when a trained supervisor has reason to believe that an employee is in violation of this policy. The reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee; the observations may also include indications of the chronic and withdrawal effects of controlled substances. The supervisor must consult with the Department Director (or designee) and affirm the basis of the suspicion. If the Department Director concurs, the employee will be required to undergo testing only after consultation with the Director of Human Resources. A written report of the reasonable suspicion observations must be prepared by the supervisor(s) who made the observation within 24 hours of the observed behavior or before the results of tests are released, whichever is earlier. This report must be promptly forwarded to the Director of Human Resources.

- **Reasonable Suspicion Alcohol Testing.** Reasonable suspicion alcohol testing is permitted only if the reasonable suspicion observation is made during, just before, or just after, the period of the workday the employee is required to be in compliance with this policy. An employee may be directed to undergo reasonable suspicion testing only while the employee is performing, just before performing, or just after performing, safety sensitive functions. If alcohol testing cannot be administered within 2 hours after the reasonable suspicion observation, a written statement that explains why the alcohol test was not promptly administered must be given to the Director of Human Resources. If alcohol testing cannot be administered within 8 hours after the observation, the City will cease attempts to administer an alcohol test and the appropriate supervisor must immediately document the reasons that the alcohol test was not administered; this report must be promptly forwarded to the Director of Human Resources.

Notwithstanding the absence of a reasonable suspicion alcohol test under this policy, an employee may not report for duty or remain on duty requiring the performance of safety sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse. In such instances, the employee will not be permitted to perform or continue to perform safety sensitive functions until:

- An alcohol test measures the employee's alcohol concentration at less than 0.02; or
- 24 hours have elapsed since the reasonable suspicion observation was made.
- **Reasonable Suspicion Drug Testing.** A driver will be drug tested as soon as practicable but not later than 32 hours after the reasonable suspicion observation. If the driver is not drug tested within 32 hours, the appropriate supervisor must prepare a report documenting the reason why and promptly forward the report to the Director of Human Resources.

Random Testing. Drivers are selected for random, unannounced drug and alcohol testing using a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the employee's Social Security number, payroll identification number, or other comparable identifying numbers. Each driver subject to this policy will have an equal chance of being tested each time random selections are made. The number of drivers randomly selected will be in accordance with applicable DOT regulations. Each driver randomly selected for testing will be tested during the selection period. Dates and times for random testing are unannounced and spread reasonably throughout the calendar year. Each driver selected for random testing must proceed to the test site immediately after notification; if, however, the driver is performing a safety-sensitive function, other than driving a CMV, at the time of notification, the City will instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible. A driver will be randomly tested for alcohol just before, during, or just after performing, safety sensitive functions; random testing for drugs does not have to be conducted in immediate time proximity to performing safety sensitive functions.

- Performing a safety-sensitive function means an employee who is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, just completed performing, or immediately available to perform any safety-sensitive functions.

Return-to-duty and Follow-up Testing. Return-to-duty tests are conducted when a driver who has violated DOT's prohibited drug and alcohol standards returns to performing safety sensitive duties. Follow-up tests are unannounced, and at least 6 tests must be conducted in the first 12 months after a driver returns to duty; follow-up tests may be extended for up to 60 months following a driver's return to duty. Drug tests must be negative and alcohol tests must demonstrate a breath alcohol level of less than 0.02. The driver will pay all costs associated with return-to-duty testing. When applicable, the City will follow all applicable DOT regulations in requiring return-to-duty and follow-up testing. The City is not, however, required to hire an applicant or continue the employment of a driver who has violated DOT drug and alcohol regulations, or this policy and it is the policy of the City not to do so. Thus, return-to-duty and follow-up tests are generally applicable only for those seeking assistance as set out below and, based on individual

circumstances, for those who may have had an alcohol concentration of 0.02 or greater, but less than 0.04.

Refusal to Test. An employee who refuses to be tested in any of the above circumstances, who obstructs the testing process, or who tampers/alters a specimen, will not be permitted to perform or continue to perform safety sensitive functions and will likely be terminated. An applicant who does one of these prohibited acts will not be hired. Except in the case of pre-employment testing, a refusal to test includes the failure to appear for testing within a reasonable time, as well as failure to remain at the testing site until the testing process is complete. Failure to test also includes the failure to provide the required sample with no adequate medical explanation, and the failure to cooperate with any part of the testing process (e.g., refusing to empty pockets when asked to do so, behaving in a confrontational way that disrupts the collection process, or failure to undergo a medical exam or evaluation as directed by the physician medical review officer (MRO) as part of the verification process).

Additional Information About Alcohol Testing.

- a. **Consequences of a Positive Alcohol Test.** An employee who is tested and has an alcohol concentration of 0.04 or greater will be removed from safety sensitive functions and may be terminated. An employee who is tested and has an alcohol concentration of .02 to .039 will not be permitted to perform safety sensitive functions for a minimum of 24 hours and will be disciplined, up to and including termination. If not terminated, then the employee will receive a mandatory referral to a substance abuse professional. Any non-compliance with the treatment recommendations of the substance abuse professional will result in disciplinary action, up to and including termination. (The employee will be placed on administrative leave without pay during the treatment period. That employee may use accrued sick leave during the treatment period.)
- b. **Alcohol Testing Procedures.** A trained breath alcohol technician will conduct alcohol tests. If the alcohol concentration is 0.02 or greater, a second confirmation test will be conducted in accordance with DOT regulations, the results of which will determine any actions taken. Any result of less than 0.02 alcohol concentration is considered a “negative” test. The second, confirmation test results determine if the employee is in violation of this policy. Testing procedures that ensure accuracy, reliability and confidentiality of test results will be followed pursuant to DOT regulations.

Additional Information About Drug Testing.

- a. **Drug Testing Procedures.** Drug testing is conducted by analyzing a driver's urine specimen at a lab certified by the U.S. Department of Health and Human Services. The driver provides a specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody document, and prepares the specimen and accompanying paperwork for shipment to a drug-

testing lab. "Split" urine specimens provide drivers with an opportunity for a second test, if needed. If the driver challenges the validity of the test, then the employee has 72 hours to request that the split specimen be sent for testing to another certified lab approved by the City's Director of Human Resources. The second test will be at the driver's own expense.

b. Drugs Tested For. DOT requires testing for the following drugs:

- Marijuana (THC)
- Cocaine
- Amphetamines
- Opiates
- Phencyclidine (PCP)

A screening test is performed first. If it is positive for one or more of these drugs, then a confirmation test is performed. Whenever the terms "drug," "drugs" or "controlled substances" are used in this policy, they refer to the substances listed above. The City will not test for any other substances under this policy. The City may, however, test for other controlled substances pursuant to its general Drug and Alcohol Use Policy.

- c. Review of Drug Test Results. All positive drug test results are reviewed and interpreted by a physician medical review officer (MRO) before they are reported to the City. If the lab reports a positive result to the MRO, the MRO will contact the driver (either in person or by phone) and will conduct an interview to determine if there is an alternative medical explanation for the drug(s) found in the driver's urine specimen. If the driver provides appropriate documentation and the MRO determines that it is a legitimate medical use of the prohibited drug(s), the drug test result is reported as a negative to the City.
- d. Consequences of a Positive Drug Test. A driver will be removed from safety sensitive duties and placed on administrative leave if the test returns a positive for drugs. The removal cannot take place until the MRO has interviewed the driver and determined that the positive test resulted from the unauthorized use of a controlled substance. A confirmed positive drug result will result in termination of employment.

Confidentiality. Test results may be released only to the driver, designated City officials, a substance abuse professional, laboratory officials or a medical review officer. Records will also be made available to a subsequent employer or other identified person upon the driver's specific written request. Test results will not be released to others except as required by law or expressly authorized in the applicable DOT regulations (e.g., the decision maker in a lawsuit, appeal or administrative proceeding initiated by or on behalf of the driver and arising from a positive DOT drug or alcohol test or refusal to test; this includes workers' compensation and unemployment proceedings.) All test results will be kept in a confidential file by the Director of Human Resources. Management and supervisory personnel who are authorized to have access to alcohol and drug testing

results must maintain complete confidentiality regarding this information. City employees who make a reasonable suspicion observation or who witness an accident must also maintain confidentiality. Breach of confidentiality relating to test results, or any other related matters, will likely result in disciplinary action, up to and including termination of employment.

Information from Prior Employers. The City will comply with the requirements of the FMCSA Clearinghouse regulations to obtain information from previous employers regarding alcohol test results of 0.04 or greater, verified positive drug test results, refusals to test (including verified adulterated or substituted drug test results), and any other violation of DOT drug and alcohol testing regulations within the statutory requirements of the driver's application, promotion or transfer. Affected individuals must also comply with the FMCSA clearinghouse requirements. If the City receives any such information about an applicant-driver, the applicant will not be hired; if such information is received about an employee seeking promotion or transfer, the employee will not be promoted or transferred to the driver position and may also receive disciplinary action, up to and including termination of employment. The City will maintain a written, confidential record of the information it obtains and/or the good faith efforts it made to obtain the information. This information will be retained for a minimum of 3 years. The City will also ask if the person has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the driver applied for, but did not obtain, safety sensitive transportation work covered by a DOT agency drug and alcohol testing rules during the past 2 years. If the person admits to such conduct, the person will not be allowed to perform safety sensitive functions for the City. If the driver refuses to provide the City with the required written consent, the driver will not be permitted to perform safety sensitive functions and will likely be disciplined (up to and including termination of employment) if employed, or not hired if applying for employment.

Record Retention. The City will maintain and retain records under this policy as mandated by DOT regulations.

Notification to Applicants/Employees of Positive Test Results. The City will notify applicants of the results of a pre-employment drug test if the applicant requests such results within sixty calendar days of being notified of the disposition of the employment application. The City will notify an employee of the results of random, reasonable suspicion and post-accident drug tests if the test results are confirmed positive, and also which controlled substance(s) verified positive after the MRO confirms the positive. The City will also make reasonable efforts to contact and request each driver who tested positive to contact and discuss the results of their drug test with an MRO who has been unable to contact the driver. The City will immediately notify the MRO that the driver has been notified to contact the MRO within seventy-two hours.

Employee Admission of Drug/Alcohol Use. An employee who admits to alcohol misuse or drug use must do so in accordance with the City's general Drug and Alcohol Use Policy; provided, however, the employee may not self-identify in order to avoid the testing requirements of this DOT policy. Further, the employee must make the admission

prior to performing a safety sensitive function, i.e., prior to reporting for duty. The employee may not perform a safety sensitive function until the City is satisfied that the employee has been evaluated and has successfully completed educational or treatment requirements in accordance with the City's general Drug and Alcohol Use Policy. A drug and alcohol abuse evaluation expert, i.e., an EAP professional, a substance abuse professional or a qualified drug and alcohol counselor, will determine successful completion. Prior to the employee performing safety sensitive functions, the employee must undergo a return to duty alcohol test with a result of less than 0.02 and/or a return to duty drug test with a negative test result.

Safety Sensitive Functions. For purposes of this policy, safety sensitive function or duty means all the time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. Safety sensitive functions/duties include:

- All time at a City, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City.
- All time inspecting equipment as required by applicable DOT regulations or otherwise inspecting, servicing, or conditioning any CMV at any time.
- All time spent at the driving controls of a CMV in operation.
- All time, other than driving time, in or upon any CMV.
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Transportation to Testing Site. Except for pre-employment and random testing, employees will be driven to the testing facility by a supervisor. The supervisor will remain with the employee during the testing process. The City will make arrangements to have the employee transported back to the City or home, as appropriate, after the testing is complete.



Human Resources Department

ITEM 2.6

Kelli Sames
Director of Human Resources
(512)-715-3213
ksames@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: Discuss and consider action: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 4.02 TRAINING AND EVALUATION PERIOD OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS: K. Sames

Background: The City of Burnet currently has in effect an Employee Personnel Policy Manual that was adopted by City Council on December 8, 2009 with an effective date of December 8, 2009. Since the original adoption, recommended revisions to the Personnel Policy have occurred from time to time.

Information: Personnel Policy 4.02 Training and Evaluation Period has been rewritten and revised. It is the current policy of the City of Burnet to require a new employee to satisfactorily complete a ninety (90) to one hundred eighty (180) day training and evaluation period, depending upon the position. The current policy also provides for an undefined time extension for the training and evaluation period.

During the training and evaluation period, the employee's supervisor trains, instructs, reviews, and counsels the employee in the operations of the department, the expectations of the City, and the performance level required for the position. Supervisors use this time to observe and evaluate the work of the new employee.

The proposed personnel policy provides for a 6-month (180 day) evaluation period, with an additional 90-day extension, if warranted, to fully evaluate an employee's performance in a new position.

The proposed personnel policy also adds the following sections for additional guidance to department supervisors and employees.

- Change in Assignment of Employee Serving in the Training and Evaluation Period
- Absences During the Training and Evaluation Period
- Employee Coaching During the Training and Evaluation Period
- Extensions to the Training and Evaluation Period
- Successful Completion of the Training and Evaluation Period “Regular” Status Granted
- Failure of Training and Evaluation Period

The proposed policy is attached as Exhibit A.

The current policy states -

New employees are required to complete a ninety (90) to one hundred eighty (180) day training and evaluation period, depending upon the position. The training and evaluation period shall be utilized for closely observing employees work, for securing the most effective adjustment of a new employee to the position.

During the training and evaluation period, the Department Director shall report to the City Manager on observations of the employee’s work and on judgments as to the employee’s willingness and ability to perform the duties and as to his/her work habits and dependability. The Department Director may in writing extend the evaluation and training period for an employee requiring additional time to demonstrate competence in the duties assigned.

The use of a training and evaluation period does not constitute a contract with an employee. The City of Burnet is an at-will employer.

Fiscal Impact:

N/A

Recommendation:

City staff recommends approval of Resolution No. R2020-17 updating Personnel Policy No. 4.02 Training and Evaluation Period as presented.

RESOLUTION NO. R2020-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 4.02 TRAINING AND EVALUATION PERIOD OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS.

Whereas, the City Council believes its personnel policies should reflect the needs of the City and meet all applicable state and federal labor laws; and

Whereas, it is necessary to update, revise, and clarify language in the City of Burnet Personnel Policies consistent with laws, regulations, and industry standard practices; and

Whereas, the City of Burnet has previously adopted Ordinance No. 2009-31, Personnel Policy Manual on December 8, 2009; and

Whereas, the Personnel Policy Manual was last revised on April 28, 2020; and

Whereas, the City Council believes it is in the best interest of the City and its employees to make additional amendments to said Personnel Policy Manual; and

Whereas, The City Council has reviewed the proposed amendments to the Personnel Policy Manual and has determined the need to update and clarify those sections.

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

Section 1. The City Council hereby accepts and adopts the amendment to the Personnel Policy to include sections 4.02 Training and Evaluation Period as attached hereto as Exhibit "A" with an effective date of May 26, 2020.

Section 2. The findings and recitations set out herein above are 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 3. If any provision of this resolution or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

Section 4. That it is hereby officially found and determined that the meeting at which this resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this 26th day of May 2020.

CITY OF BURNET, TEXAS

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary

Exhibit A

Proposed Policy

4.02 TRAINING AND EVALUATION PERIOD (Revised 5-26-2020 Resolution 2020-17)

All new employees hired to fill regular full-time or part-time positions must satisfactorily complete an initial training and evaluation period of 6 months.

The training and evaluation period assists the City in maintaining an effective, productive, and efficient workforce to provide quality services to the citizens. Employees are considered in the training and evaluation period until they have performed their regular job duties for a period of 6 months.

Each employee serving in the training and evaluation period is responsible for knowing, understanding, and meeting the expectations and standards for the position. In addition, each employee is also responsible for performing the job in a safe, productive, and effective manner within the instructions and established standards for the position. Furthermore, employees are expected to maintain acceptable standards of conduct in their employment. During the training and evaluation period, it is the responsibility of the employee to correct any deficiencies or inadequacies in job performance, or conduct.

Seasonal/Temporary Employees. Seasonal and temporary full and part-time employees do not serve a training and evaluation period.

Change in Assignment of Employee Serving in the Training and Evaluation Period.

Employees serving in the training and evaluation period may not request or make application for reassignment or voluntary transfer during this period without approval from the Department Director and written approval from the City Manager. If the reassignment or transfer is approved, the employee will serve a training and evaluation period of 6 months in the new position beginning with the date of the position change.

Absences During the Training and Evaluation Period. During the training and evaluation period, a new benefit eligible employee is not eligible to use sick leave for the first three months of qualifying absences due to illness or injury. Compensatory time off, flex time or recognized holidays during the training and evaluation period may be used as approved per established City policy or practice. Transferred or promoted employees serving in the training and evaluation period retain eligibility for all types of leave established by City policy.

Employee Coaching During the Training and Evaluation Period. Two documented coaching's of new employees, including new internal hires, will be performed during the 6-month training and evaluation period, normally at 3 and 6 months

Extensions to the Training and Evaluation Period. The training and evaluation period may be extended under the following circumstances:

At the end of the 6 month initial period, the training and evaluation period may be extended for up to an additional 3 months when an employee's performance has been marginal due to extenuating circumstances, additional training is warranted, or an employee's absence from work for an extended period of time did not permit an opportunity for adequate assessment of performance. The decision to extend or not to extend the training and evaluation period may not be appealed. If an extension is granted, the employee will be advised in writing and given the date on which the extended training and evaluation period will be completed. Such extensions will be at the sole discretion of the Department Director and the Director of Human Resources.

The training and evaluation period may be extended for time spent on an approved Leave of Absence including leaves of absences due to injury or illness or approved Military Leave. The approved extension will normally equal the length of time away from work.

Successful Completion of the Training and Evaluation Period "Regular" Status Granted. An employee is granted "regular" status in the new position if the employee satisfactorily completes the training and evaluation period.

Failure of Training and Evaluation Period. An employee is considered to have failed the training and evaluation period when it is determined that the employee's job performance, quality or quantity of work, attendance, or combination thereof, does not meet minimum job performance standards and expectations for the position. Failure of the training and evaluation period may occur at any time within the period. An employee who does not successfully complete the training and evaluation period will normally be terminated from the City's employment.

If desirable and feasible, the employee may be administratively transferred to a more suitable position if approved by the affected Department Director(s) and the City Manager. A transferred or promoted employee who fails the training and evaluation period may, at the sole discretion of the City, be reinstated to the former position provided there is a vacancy and if approved by the affected Department Director(s) and the City Manager.

Department Directors are responsible for ensuring the thorough written documentation of all cases of failure of the training and evaluation period, including documentation of performance, counseling, training, and other efforts to help employees during this period. All such documentation must be reviewed by the Director of Human Resources and approved by the City Manager before an employee serving in the orientation period can be terminated.

At-Will Employment. Employees have no guarantee of employment either during or after the training and evaluation period. All employees of the City including those serving in the initial orientation period are at-will employees and may be terminated at any time during the orientation period, with or without notice or cause.



Public Works

ITEM 2.7

Gene Courtney
Director of Public Works
830-798-4769
gcourtney@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: Discuss and consider action: FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET AMENDING THE CODE OF ORDINANCES SECTION 110-136 (ENTITLED "ELECTRIC CONNECTION FEES") AND SECTION 110-137 (ENTITLED "RESPONSIBILITY FOR CONNECTION OF ELECTRICAL SERVICE") BY REVISING THE ELECTRIC CONNECTION FEES, ELECTRIC METER INSTALLATION CHARGES, AND ELECTRIC TAP FEES; PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE: G. Courtney

Background: Council and staff previously had conversations about reviewing the Tap Fees in the City Ordinance. Staff's review was specific to a few areas. First, how did the body of the Code present the charge for service installation and what work went into providing that service. Second, does the current ordinance represent the actual true cost of providing those services with today's city practices

Information: After review staff has decided to remove the terms Standard and Non-standard tap fee and create an Installation Charge and a Tap Fee. This change is to separate the two processes and identify the appropriate charges for each one. The electrical connection charge will go from \$450.00 to \$500.00.

Fiscal Impact Minimal

Recommendation: Approve and the first reading of Ordinance 2020-14 as presented.

ORDINANCE NO. 2020-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET AMENDING THE CODE OF ORDINANCES SECTION 110-136 (ENTITLED “ELECTRIC CONNECTION FEES”) AND SECTION 110-137 (ENTITLED “RESPONSIBILITY FOR CONNECTION OF ELECTRICAL SERVICE”) BY REVISING THE ELECTRIC CONNECTION FEES, ELECTRIC METER INSTALLATION CHARGES, AND ELECTRIC TAP FEES; PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City is a provider of electricity to its citizens; and

WHEREAS, the provision of electricity includes the costs for electric current, reading electric meters, constructing and repairing electric infrastructure and connect service and meters for new customers; and

WHEREAS, City Council's objective in setting electricity related fees is to impose fees in an amount that will allow the City to cover the costs for providing electricity so that electricity service is self-sufficient and not reliant on the general fund; and

WHEREAS, City Council's purpose for these amendments is to assure the fee setting objectives are met and to clarify how other subsections of Sections 110-136 and 110-137 of the Code are to be applied.

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

Section 1. Code Amendment. The Code of Ordinances of the City of Burnet, Chapter 110 (entitled "Utilities") Section 110-136 (entitled "General requirements and limitations") is hereby amended by replacing the existing language in its entirety with the language that follows:

Sec. 110-136. - Electric Connect Fees.

(a) *Connection Fees.* Connections with the municipal electric system are as follows:

- (i) *Existing Tap.* Connections fees for new service with an existing tap shall be charged an Electric Meter Installation Charge as state in Table 110-136(a).
- (ii) *No existing Tap.* Connections with the municipal electric system without an existing tap shall be charged an Electrical Meter Installation Charge stated in Table 110-136(a); and, an Electric Tap Fee as stated in Section 110-136(c).

Table 110-136(a). Electric Meter Installation Charge

Meter Type and Size	Meter Installation Charge
200-amp 2s	\$500.00
Meters exceeding 200-amp 2s	\$500.00 plus all additional costs

- (b) *Hardware Provided.* The Meter Installation Charge shown in **Table 110-136(a)** covers the cost of one 200-amp meter and one meter socket. In addition, if needed, the city will provide any customer with one transformer up to 100 KVA. Customer shall bear any additional costs should the load require a transformer larger than 100 KVA.
- (c) *Electric Tap Fee.* Connections with the municipal electric system without an existing tap shall require payment of an Electric Tap Fee. As the City's costs for providing an Electric Tap will vary depending on accessibility to the service line, the Electric Tap Fee shall be equal to the total cost of installation, including materials, equipment, and labor. Electric Tap Fee may include, but are not limited to, cutting across a right-of-way, road repairs, cutting through rock and all costs associated with easement acquisition (including land surveying, easement purchase price, and attorney fees). Additionally, the Electric Tap Fee will include costs the City incurs for devoting staff to complete an electric tap project.
- (d) *Payment due in advance.* Payment of the Electric Meter Installation Charge and the Electric Tap Fee shall be paid in full prior to city issuing the work order. In the case of the

Electric Tap Fee, an estimate shall be made as to the final costs and the customer shall pay the estimated final costs in advance. At the completion of the work, the actual final costs of the Electric Tap shall be calculated. Should the actual costs of the Electric Tap exceed the estimated costs the customer shall pay the difference. Should the actual costs be less than the estimated final costs the City shall refund the difference

Section 2. Code Amendment. The Code of Ordinances of the City of Burnet, Chapter 110 (entitled "Utilities") Section 110-137 (entitled "Responsibility for connection of electrical service") is hereby amended by replacing the existing language in its entirety with the language that follows:

Sec. 110-137. - Responsibility for connection of electrical service.

- (a) *Overhead secondary service lines.* Upon the customer's payment of all fees associated with new construction the city will supply overhead secondary service lines subject to the following:
 - (i) *Construction plans.* Prior to city issuing a work order the customer shall provide a plan for the building or other permanent facility.
 - (ii) *Service extension.* The city shall determine the type and location of the service extension and shall connect to customer-installed wiring; provided the customer-installed wiring is in compliance with regulatory requirements.
 - (iii) *Customer's request.* Upon a request by customer the city may change the point of delivery; provided customer pays any actual costs associated with the request. The final determination as to the location of the point of delivery shall always rest with the city; and the city may refuse any request for a change in the point of delivery.
 - (iv) *Attachment Poles.* Customers shall be responsible for providing a suitable attachment point for installation of the service line. The attachment must comply with chapter 22 of this code; and with applicable codes published by the state, or other regulatory bodies. In the event of a conflict between regulatory publications the most stringent regulation, as determined by the city, shall apply.
- (b) *City meter pole.* Customers may request service be delivered to a city meter pole. In such cases, customers must provide an approved service meter loop on the pole. Customers must also install and pay for any service line required beyond the meter pole. The final determination as to service delivery via a city metered pole shall always rest with the city; and the city may refuse any request for service delivery via a city metered pole.

- (c) *Underground service lines.* Customers are responsible for installing and maintaining underground secondary service lines from the point of delivery to the main disconnect switch and service center. The city will assume no responsibility for the connection or the use of such connections.
- (d) *Connection fees.* Customer shall be responsible for payment of electric connection fees as provided in Section 110-136 of this article prior to city's issuance of any work order.
- (e) *Prohibition.* No person shall provide, or cause to be provided, electrical service to any improved property within the corporate limits of the city by any means other than connection to the city electrical system, or, if the improved property is in a retail public utility's certificate of convenience and necessity area, by connection to a retail public utility authorized by the Public Utility Commission of Texas to provide electricity within the certificate of convenience and necessity area. It shall be an exception to this prohibition to provide emergency electrical service as authorized in subsection (f).
- (f) *Emergency electrical service.* This section provides an exception to the prohibition stated in subsection (e) during times of emergency. For the purposes of this exception an emergency occurs only when city, or retail public utility as the case may be, electric service is temporarily disrupted to an improved property due to weather or other factors outside the control of the city or retail public utility. The use of a generator to provide electricity to an improved property in an emergency is allowed; provided however, upon restoration of electricity by the city to the improved property the use of the generator shall cease. The operation of an emergency generator shall comply with applicable safety requirements of the International Fire Code and International Building Code. Disconnection of city services by the city shall not constitute an emergency under this subsection.

Section 3. Findings. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 4. Penalty. A violation of this ordinance is unlawful and subject to penalty as prescribed in City Code of Ordinances Sec. 1-6 (entitled "*general penalty*").

Section 5. Cumulative. This ordinance shall be cumulative of all provisions of all ordinances and codes, or parts thereof, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event section six shall apply.

Section 6. Repealer. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 7. Severability. Pursuant to Code of Ordinances of the City of Burnet, Section 1-7, if any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid or unenforceable, the validity of the remaining portions of this Ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the city council in adopting, and of the mayor in approving this Ordinance, that no portion of this Ordinance, or provision or regulation contained in this Ordinance, shall become inoperative or fall by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

Section 8. TOMA Compliance. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code; as suspended, or otherwise modified, by executive orders of the governor of this state in response to the COVID-19 pandemic.

Section 9. Publication. The publishers of the City Code of Ordinances are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.

Section 10. Notice. The City Secretary is hereby directed to publish notice of this Ordinance, as required by Section 3.14 of the City Charter and the laws of the State of Texas.

Section 11. Effective Date. This Ordinance shall be effective upon the date of final adoption hereof and publication as required by law.

Passed on first reading on the 26th day of May, 2020

Passed and Adopted on the 9th day of June, 2020

CITY OF BURNET

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary



Administration

ITEM 2.8

David Vaughn
City Manager
(512)-715-3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: Discuss and consider action: Direction to staff regarding the creation of a public utility payment assistance program: D. Vaughn

Background: Due to the financial hardships caused by COVID-19, the City Council previously requested staff to evaluate options to help businesses with utility assistance.

Information: Staff will present several options at the meeting and request direction from Council in order to outline the creation of a program to be potentially voted on at a future meeting.

Fiscal Impact: To be determined.

Recommendation: To be determined by Council

**Addendum to City Council Agenda
Department and Committee Reports/Briefings**

The items listed below include subjects that are of interest to the City Council. The Council may or may not receive a briefing dependent upon activity or change in status regarding the matter. This listing is provided to give notice to the public that a briefing to the Council on any or all subjects may occur.

A. Administrative Services

1. Economic Development Corporation
2. Burnet Municipal Airport
3. Commemorative Air Force/Museum
4. Special Projects

B. Department of Finance

1. Utilities
2. Human Resources
3. Budget and Finance Reports

C. Municipal Court

1. Quarterly Reports

D. City Secretary

- | | |
|---------------------------|-------------------------------------|
| 1. Records Management | 4. Special Projects or Activities |
| 2. Elections | 5. Interlocal Agreements and Leases |
| 3. Boards and Commissions | 6. Administration |

E. Police Department

- | | |
|-------------------|----------------------------|
| 1. Animal Control | 2. School Resource Officer |
| 3. Reports | |

F. Fire Department

- | | |
|-------------------------------|-------------------------|
| 1. Emergency Medical Services | 2. Emergency Management |
| 3. Administration | |

G. Public Works

- | | |
|--------------------------------|---------------------------|
| 1. Electric Department | 4. Street Department/Shop |
| 2. Water/Wastewater Department | |
| 3. Parks/Maintenance | |

H. Delaware Springs Golf Course

I. Development Services

- | | |
|---------------------|-------------------------------------|
| 1. Code Enforcement | 5. Planning and Zoning |
| 2. Cemetery | 6. Board of Adjustments |
| 3. Floodplain | 7. Building Inspection & Permitting |



Development Services

ITEM 3.1(I.7)

Jason Lutz
Development Services
(512) 715-3215
jlutz@cityofburnet.com

Agenda Item Brief

Meeting Date: May 26, 2020

Agenda Item: STAFF REPORT: Updated Quarterly Building Report: J. Lutz

Background:

Information: Staff has compiled building department numbers and included an update on the status of some residential developments.

Total Permits Issued (New Construction & Remodels)

Month	# Issued
February	4
March	3
April	7

New Residential Building Permits

Month	# Issued
February	3
March	1
April	4

New Commercial Building Permits

Month	# Issued
February	0
March	0
April	0

Project(s) Status:

1. Pepper Mill

- a. Letters of Credit have been approved for Phase II and the applicant is moving forward with completing additional work on the site.
- b. Phase III is currently being designed and should be submitted to the City within a few weeks.

2. Oak Vista Subdivision (Lot numbers 80-83, 95-99, and lot 130)

- a. A variance was granted regarding street construction standards, curbs, and lighting. The applicant is working on submitting updated documents, showing the changes, for the approved plans.

3. Westfall Village

- a. The applicant is installing infrastructure now and is working with the engineer to obtain a list of uncompleted items and provide the City a Letter of Credit in order to record the final plat. Staff expects that submittal within the next week.

4. Scott & White (1300 E. Polk St.)

- a. Received their Certificate of Occupancy.