

**ORDINANCE NO. 2021-18**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET AMENDING THE CODE OF ORDINANCES SECTION 118-74 (ENTITLED "BOARD OF ADJUSTMENT") BY CODIFYING THE BOARD OF ADJUSTMENT'S COMPOSITION; TERM; AND SCOPE OF AUTHORITY PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, Texas Local Government Code Section 211.008 authorizes City Council to appoint a Board of Adjustment; and

**WHEREAS**, Texas Local Government Code Section 211.009 provides that the Board of Adjustment may hear and decide: an appeal that alleges error in an order, requirement, decision or determination made by the zoning administrator; special exceptions to the terms of zoning ordinance; and requests variances from the terms of the zoning ordinance; and

**WHEREAS**, City Council established a Board of Adjustment by the adoption of City Code Section 118-74

**WHEREAS**, City Council's objective in adopting this ordinance is to codify the Board of Adjustment's composition, term of office and scope of authority.

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

**Section one. Code Amendment.** The Code of Ordinances of the City of Burnet, Chapter 118 (entitled "Zoning") Section 110-74 (entitled "Board of Adjustment") is hereby amended by replacing the existing language in its entirety with the language that follows:

**Sec. 118-74. - Board of adjustments.**

- (a) *Established.* A board of adjustments (hereafter in this section, the "board") is established in accordance with the provisions of Chapter 211 of the Local Government Code and the Home Rule Charter of the City of Burnet, regarding the zoning of cities and with the powers and duties as provided in said code.
- (b) *Members.* The board shall consist of 5 members appointed by City Council.
- (c) *Alternates.* City Council may appoint up to two alternate members to serve in the absence of one or more regular members at the request of the mayor or city manager.

(d) *Term.* Members and alternate members shall serve two-year terms. Vacancies in the term of a member or alternate member shall be filled for the unexpired term. A member or alternate member may only be removed from the board, before the expiration of a term for cause, as found by city council on a written charge after a public hearing.

(e) *Scope of Authority.* The board may hear and decide:

(i) *Special Exceptions.* In appropriate cases and subject to appropriate conditions and safeguards, the board may make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the zoning ordinance and in accordance with any applicable rules contained in the zoning ordinance.

(ii) *Appeals.* The board may hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by zoning administrator in the enforcement of Texas Local Government Code Chapter 211, subchapter A or the zoning ordinance.

(iii) *Variances.* The board may authorize in specific cases a variance from the terms of the zoning ordinance if the variance:

(A) is not contrary to the public interest; and,

(B) is not contrary to the spirit of the zoning ordinance; and

(C) is necessary for substantial justice to be done; and

(D) is necessary due to special conditions, which causes a literal enforcement of the regulation to result in unnecessary hardship. To find unnecessary hardship exists the board must affirmatively find:

(1) The hardship is in no way the result of the applicant's own actions; and

(2) Special conditions exist of restricted area, topography or physical features that are peculiar to the subject property and are not applicable to other properties in the same zoning district; and

(3) the application of the regulation to the subject property deprives the applicant of rights commonly enjoyed by other properties in the same zoning district that are in compliance with the same regulation.

(iv) *Other matters.* The board may hear and decide other matters authorized by the zoning ordinance.

(v) *Airport Zoning Board of Adjustment.* Pursuant to, and in accordance with the requirements of, Texas Local Government Code Chapter 241,

subchapter C, and City Code Chapter 18, article IV, the board shall serve as the Airport Board of Adjustment and hear and decide an appeal of an order, requirement, decision, or determination of the airport's administrative agency; matters on which the board is required to pass under an airport zoning regulation; or a request variation in an airport zoning regulation.

(f) *Quorum.* Each case before the board must be heard by at least 75 percent of the members.

(g) *Rules.* The board, by majority vote, shall adopt rules in accordance with the zoning ordinance; City Code Chapter 18, article IV; Texas Local Government Code Chapter 211, subchapter A and Texas Local Government Code Chapter 241, subchapter C. The adopted rules shall become effective upon approval by City Council.

**Section two. 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 three. 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 four. 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 five. 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 six. 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 seven. 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 eight. 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.

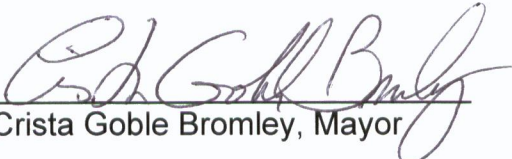
**Section ten. Notice.** The City Secretary has published notice of this Ordinance, as required by Section 3.14 of the City Charter and the laws of the State of Texas.

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

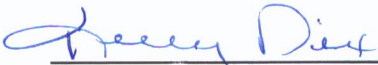
Passed on first reading on the 25<sup>th</sup> day of May, 2021

Passed and Adopted on the 8<sup>th</sup> day of June, 2021

**CITY OF BURNET**

  
Crista Goble Bromley, Mayor

**ATTEST:**

  
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Kelly Dix, City Secretary

