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**ORDINANCE NO. 2021-35**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS AMENDING THE CODE OF ORDINANCES CHAPTER 1 (ENTITLED "GENERAL PROVISIONS"); SECTION 1-6 (ENTITLED GENERAL "PENALTY FOR VIOLATIONS OF THE CODE PROVIDING FOR PENALTY") BY RENAMING AND RECODIFYING THE SECTION (TO BE ENTITLED "PENALTIES AND CREDIT CARD PROCESSING FEES") AND ESTABLISHING A FEE FOR THE USE OF A CREDIT CARD FOR PAYMENT OF A FEE, FINE, PENALTY, UTILITY CHARGE, OR OTHER CHARGE, EXCEPT GOLF COURSE CHARGES; PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the city incurs costs in the form of credit card surcharges when processing utility, fee, fine, or penalty payments made by credit cards; and

**WHEREAS**, Texas Local Government Code Section 132.002(b) provides the city council may authorize a municipal official who collects fees, fines, court costs, or other charges to: (i) accept payment by credit card of a fee, fine, court cost, or other charge; and (2) collect a reimbursement fee for processing the payment by credit card; and

**WHEREAS**, Texas Local Government Code Section 132.003 provides that in establishing a reimbursement fee the city council shall set the reimbursement fee in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card; not to exceed five percent of the fee, fine, court cost, or other charge; and

**WHEREAS**, if, for any reason, a payment to the city by credit card is not honored by the credit card issuer, Texas Local Government Code Section 132.004 provides city council may imposes a service charge, equal to the service charge fee charged for the collection of a check drawn on an account with insufficient funds; and

**WHEREAS**, city council deems it appropriate to impose the reimbursement charge and service charges authorized by Texas Local Government Code Chapter 132, to recoup the city's costs for processing payments by credit cards, except at the golf course.

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

**Section one. Code Amendment.** The Code of Ordinances, Chapter 1 (entitled “*general provisions*”) Section 1-6 (entitled “*penalty for violations of the code providing for penalty*”) is hereby amending by renaming the Section as “Penalties and Credit Card Processing Fees”) and recodifying the existing language as new subsection (a) to read as follows:

**Sec. 1-6. Penalties and Credit Card Processing Fees.**

(a) *General penalty for violations of Code.*

- (1) Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not less than \$1.00 and not more than \$500.00 except:
  - (a) A fine or penalty for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or public health and sanitation, other than the dumping of refuse, may not exceed \$2,000.00; and
  - (b) A fine or penalty for the violation of a rule, ordinance, or police regulation that governs the dumping of refuse may not exceed \$4,000.00.
- (2) However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense.
- (3) The city may bring a civil action, as necessary, to enjoin any threatened violation of this Code for the protection of public health and safety.
- (4) Unless otherwise specifically set forth in the Code of Ordinances of the city, or in state law as adopted, allegations and evidence of culpable mental state are not required for proof of an offense for which the maximum fine is \$500.00 or less.

**Section two. Code Amendment.** The Code of Ordinances, Chapter 1 (entitled “*general provisions*”) Section 1-6 (entitled “*penalty for violations of the code providing for penalty*”) is hereby amending by renaming the Section as “*Penalties and Credit Card Processing Fees*” and adding a new subsection (b) to read as follows:

(b) *Credit Card Payment and Fees.*

- (1) *Establishment of Credit Card Processing Fee.* Whenever in this code or in any ordinance of the city a utility charge, fee, fine, penalty or other charge is established, the City may accept credit card payments for any and all utility charges, fees, fines, or penalties owed to the City; and a processing fee of **three percent (3%)** is hereby established each time a credit card is used to pay a bill for water, wastewater, electric, garbage and other utility services provided by the City; and all other municipal fees, fines, court costs or other charges.
  - (A) *Exception.* The credit card processing fee shall not apply to Golf Course fees and charges.
- (2) *Establishment of Service Charge.* A service charge, in an amount equivalent to that charged for the collection of a check drawn on an account with

insufficient funds, is hereby established to be charged if, for any reason, a payment by credit card is not honored by the credit card company on which the funds are drawn.

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

**Section five. 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 the more restrictive provision shall apply.

**Section six. 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 seven. 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 eight. 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.

**Section nine. 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 nine. Notice.** It is officially found, determined, and declared that publication of notice of this Ordinance, as required by Section 3.14 of the City Charter and the laws of the State of Texas, was made by the City Secretary within the period prescribed by Section 3.14.

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**Section ten. Effective Date.** This Ordinance shall be effective upon the date of final adoption hereof and publication as required by law. The fee will be implemented and effective November 1, 2021.

Passed on first reading on the 24<sup>th</sup> day of August, 2021

Passed Approved and Adopted on the 14<sup>th</sup> day of September, 2021

CITY OF BURNET

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Crista Goble Bromley, Mayor

**ATTEST:**

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Kelly Dix, City Secretary