

ORDINANCE NO. 2025-35

AN ORDINANCE OF THE CITY COUNCIL OF BURNET, TEXAS, AMENDING CITY OF BURNET CODE OF ORDINANCES, CHAPTER 50 (ENTITLED “FLOOD DAMAGE PREVENTION”) BY AMENDING SECTION 50-44 (ENTITLED “VARIANCE PROCEDURES”); PROVIDING CUMULATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Burnet experienced significant flooding on July 5, 2025, resulting in widespread damage to public and private property, including structures located in the FEMA-designated Special Flood Hazard Area (SFHA) and floodway; and

WHEREAS, the City of Burnet has received a Presidential Disaster Declaration (FEMA DR-4789), triggering federal assistance programs, including the requirement to conduct Substantial Damage Estimations (SDEs) for structures located within the SFHA; and

WHEREAS, under FEMA guidelines, any structure determined to be Substantially Damaged, defined as having repair costs equal to or exceeding 50% of its pre-damage market value, must be brought into compliance with current floodplain management regulations, which may include elevation, relocation, or floodproofing; and

WHEREAS, structures located within designated floodways that are found to be Substantially Damaged are subject to strict FEMA requirements, including prohibitions against any improvements that would result in increased flood levels during a base flood event; and

WHEREAS, the City of Burnet recognizes the importance of providing a fair and transparent process for property owners to appeal SDE determinations and request variances where appropriate; and

WHEREAS, Section 50-44 of the City of Burnet Code of Ordinances designates the City Council as the appeals board for hearing appeals and granting variances related to the enforcement or administration of local floodplain regulations; and

WHEREAS, in accordance with Section 50-44, appeals must be based on claims of error in the floodplain administrator’s determination, and variances must meet strict criteria to ensure public safety and compliance with FEMA regulations; and

WHEREAS, the City Council desires to adopt procedural guidance and necessary administrative support to implement the appeal and variance process effectively, ensuring compliance with FEMA requirements and protecting the health, safety, and welfare of the community; and

WHEREAS, City Council, finds, determines, and declares 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; and

WHEREAS, City Council, finds, determines, and declares 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 as required by Chapter 551 of the Texas Government Code.

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

Section One. Code Amendment. Section 50-44 of the Code of Ordinances of the City of Burnet is hereby amended by replacing the existing text in its entirety with the following:

Sec. 50-44. Appeal and variance procedures.

- (a) Scope. The city council, serving as the appeals board shall hear and render judgment on appeals and variance applications as provided in this section.
- (b) Appeals. The appeals board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter subject to the following:
 - (1) Appeals may be made by any party aggrieved by a requirement, decision, or determination of the floodplain administrator.
 - (2) An appeal must be made within 180 days of the date of the Substantial Damage Assessment Letter or the appeal shall be deemed time-barred.
 - (3) In the case the city manager determines the application for appeal identifies a clear and obvious error in the requirement, decision, or determination made by the floodplain administrator, the city manager may coordinate with the floodplain administrator to resolve the appeal without the intervention of the appeals board.
- (c) Variances.
 - (1) Variances may be issued for:
 - (A) the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section; provided that the appeals board makes a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (B) new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in

subsection 50-43(2) of this article have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

- (2) The appeals board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (section 50-3).
 - (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 - (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (5) Upon the granting of a variance allowing a structure to be built with the lowest floor elevation below the base flood elevation the floodplain administrator shall give written notice to the applicant that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 - (6) Prerequisites for granting variances: A variance shall only be granted upon the affirmative finding of a majority of the appeals board present as follows:
 - (A) the applicant demonstrated good and sufficient cause for the variance to be granted;
 - (B) the failure to grant the variance would result in exceptional hardship to the applicant; and
 - (C) the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
- (d) General provisions.
- (1) Appeals and requests for variances shall be made by submission of written application, on such form as provided by the city manager, delivered to floodplain administrator.
 - (2) The city manager shall perform an administrative completeness review of each application and may return applications that are found to be deficient and point out the deficiencies.
 - (3) Appeals and variances shall be heard by the City Council within thirty (30) days of being deemed administratively complete.
 - (4) An application for an appeal or variance that is denied may not be resubmitted for subsequent consideration by the appeals board without a material change in the request for relief.

(4) City council may adopt rules by ordinance, resolution or order, for the administration of this section.

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. 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 Four. 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 Five. 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 Six. 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 Seven. Effective Date. This Ordinance shall be effective upon the date of final adoption hereof.

PASSED, APPROVED, AND ADOPTED on this 12th day of August 2025

CITY OF BURNET, TEXAS

Gary Wideman, Mayor

ATTEST:

Maria Gonzales, City Secretary