



## Board of Commissioners Agenda Memo

**From:** Tim James, P.E. – City Manager

**Date:** January 21, 2013

**Item:** Resolution Number 542

### Background

At the January 7<sup>th</sup> meeting, the Board of Commissioners approved amending the BDC Bylaws to provide that the Executive Director will be a City employee reporting to the City Manager and that the Executive Director's salary will be reimbursed by the BDC to the City. Resolution 542 amends the bylaws of the BDC to reflect the changes approved on January 7<sup>th</sup>.

### Fiscal Impact

N/A

### Options

- Approve Resolution Number 542
- Make recommended changes to Resolution Number 542
- Take no Action

### Staff Recommendation

Staff recommends approval of Resolution Number 542

### Attachments

- Resolution Number 542

RESOLUTION NUMBER 542

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AMENDING THE BYLAWS OF THE BURKBURNETT DEVELOPMENT CORPORATION.**

**WHEREAS**, the Burkburnett Development Corporation (the "BDC") is a Type B economic development corporation created by the City of Burkburnett, Texas (the "City") on August 18, 1997; and

**WHEREAS**, in accordance with Article 10 of the Bylaws of the Burkburnett Development Corporation, the Bylaws may be amended by the Board of Commissioners; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS THAT THE BYLAWS OF THE BURKBURNETT DEVELOPMENT CORPORATION BE AMENDED TO READ:**

Article 4, Section 4.09

4.09 The Executive Director shall be an employee of the City and report to the City Manager. The funds for the salary and benefits of the Executive Director shall be provided by the Corporation. The Executive Director will be a non-voting member of the Board of Directors and all committees appointed by the Board of Directors.

**PASSED AND APPROVED** at a meeting of the Board of Commissioners of the City of Burkburnett on this 21<sup>st</sup> day of January 2013.

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Carl Law, Mayor

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Janelle Dolan, City Clerk



## Board of Commissioners Agenda Memo

**From:** Tim James, P.E. – City Manager

**Date:** January 21, 2013

**Item:** Resolution Number 543

### Background

The Board of Commissioners authorized a change in the organizational structure of the City at the January 7, 2013 meeting which would make the Executive Director of the BDC an employee of the City and report to the City Manager. Resolution Number 543 reflects the approved changes.

### Fiscal Impact

N/A

### Options

- Approve Resolution Number 543
- Take no Action

### Staff Recommendation

Staff recommends that the Commissioners approve Resolution Number 543

### Attachments

- Resolution 543

**RESOLUTION NUMBER 543**

**A RESOLUTION DEFINING AND CLARIFYING THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS INTERPRETATION OF ARTICLE V, SECTION 5 (c) PERTAINING TO THE 'ADVICE AND CONSENT' OF THE BOARD OF COMMISSIONERS IN THE PERSONNEL HIRING AND FIRING DECISIONS OF THE CITY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS,** the City of Burkburnett has had a long-standing practice of providing the Board of Commissioners with a monthly Personnel Report that reflects all of the personnel decisions of the prior month; and

**WHEREAS,** the monthly Personnel Report has served as adequate 'advice and consent' of the Board of Commissioners as required by the City Charter; and

**WHEREAS,** the current Board of Commissioners would like to provide additional direction to the City Manager as it relates to the personnel practices of the City;

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:**

**Section 1.** The hiring and firing of Senior Staff Department positions and all organizational restructuring plans require the City Manager to bring the Board of Commissioners his/her recommendation along with all of the supporting documentation and seek Council consent prior to affecting the personnel decisions or implementing an organizational structure change. Senior Staff Department positions are defined as: Chief of Police, Public Works Director, City Clerk, Director of Administration, and the Executive Director of the Burkburnett Development Corporation.

**Section 2.** The hiring and firing of all other positions within the city's organization will continue the past practice of reporting on a monthly basis to the Board of Commissioners rendering the Board of Commissioner's 'advice and consent' to those personnel decisions after the decision(s) have been made.

**PASSED AND APPROVED** at a meeting of the Board of Commissioners of the City of Burkburnett on this 21<sup>st</sup> day of January 2013.

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Carl Law, Mayor

**ATTEST:**

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Janelle Dolan, City Clerk



## Board of Commissioners Agenda Memo

**From:** Tim James, P.E. – City Manager

**Date:** January 21, 2013

**Item:** Resolution Number 544

### Background

The BDC met on January 8, 2013 and recommended an incentive agreement for A Piece of Cake by Nikki Lynn, LLC of Burkburnett. Resolution Number 544 specifies the terms of the proposed incentive agreement. This will be the first reading of Resolution Number 544. Resolution Number 544 has been reviewed by the City Attorney.

### Fiscal Impact

The funds for the incentive agreement will be provided by the BDC

### Options

- N/A since this is the first reading.

### Staff Recommendation

N/A

### Attachments

- Resolution Number 544

**RESOLUTION NUMBER 544**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING AN ECONOMIC INCENTIVE AGREEMENT BETWEEN THE BURKBURNETT DEVELOPMENT CORPORATION AND A PIECE OF CAKE BY NIKKI LYNN PROVIDING FOR ECONOMIC INCENTIVES IN RETURN FOR THE EXPANSION AND RETENTION OF BUSINESS ENTERPRISES WITHIN BURKBURNETT, TEXAS.**

**WHEREAS**, the Burkburnett Development Corporation (the "BDC") is a Type B economic development corporation created by the City of Burkburnett, Texas (the "City"), which has a population of less than 20,000; and

**WHEREAS**, the BDC has proposed entering into an agreement with A Piece of Cake by Nikki Lynn, LLC, a Texas limited liability company (hereinafter "A Piece of Cake"), of which the managing member is Nikki Lynn Portillo, wherein the BDC will loan to A Piece of Cake the sum of Ten Thousand and no/100 (\$10,000.00) Dollars, which loan represents an economic incentive package to A Piece of Cake which shall be provided for new and expanded of business development within Burkburnett, Texas, the terms of which are more specifically described below; and

**WHEREAS**, A Piece of Cake intends to open a new bakery, which is expected to create up to five (5) full time positions, and is requesting assistance for the expenses related to infrastructure improvements, equipment, and building rehabilitation for operation of such a bakery at 100 West Kramer Road, Burkburnett, Wichita County, Texas 76354; and

**WHEREAS**, this resolution has been given two readings before the Board of Commissioners: one on, January 21, 2013 and another on the date this resolution was approved; and

**WHEREAS**, this resolution was approved in a meeting which was open to the public and preceded by proper notice as required by Chapter 551 of the Texas Government Code;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, THAT:**

the BDC is hereby authorized to enter into an agreement with A Piece of Cake to provide \$10,000.00 in economic incentives, by loaning said amount to A Piece of Cake, for which A Piece of Cake shall execute a Promissory Note for the principle sum of Ten Thousand and no/100 (\$10,000.00), which shall be secured by a first lien against all equipment owned by A Piece of Cake at such facility, provided said equipment is of sufficient value to provide adequate security for said loan. Said Note shall bear interest at the rate of 0% per annum and shall be paid in two (2) years; provided, however, that the BDC shall apply a credit of \$2,500.00 on the principle of the Note for each full time position (35 or more hours per week) created by A Piece of Cake at such location over a two-year period. The total amount of loan credit shall not exceed \$10,000.00. The remaining balance on the note after two years will be converted to a new note

to be amortized over a two-year period. In the event that A Piece of Cake closes or ceases such bakery operation the balance remaining on said note shall immediately become due and payable; and

**BE IT FURTHER RESOLVED** that the officers of the City are hereby authorized and directed to take such action as may be reasonably necessary to carry this resolution into effect.

First reading on January 21, 2013.

**APPROVED** on this the day \_\_\_\_\_, \_\_\_\_\_ 2013, Second and Final Reading.

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Carl Law, Mayor

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Janelle Dolan, City Clerk



## Board of Commissioners Agenda Memo

**From:** Tim James, P.E. – City Manager

**Date:** January 21, 2013

**Item:** Ordinance Number 831

### Background

Commissioner Brewster requested that staff develop an ordinance to address concerns regarding the control and regulation of substances commonly known as K-2. Chief Tracey researched ordinances that have been adopted by other Cities and recommended the information contained in Ordinance Number 831.

### Fiscal Impact

/A

### Options

- Approve Ordinance Number 831
- Recommend changes to Ordinance Number 831
- Take no Action

### Staff Recommendation

Staff recommends approval of Ordinance Number 831

### Attachments

- Ordinance Number 831

## ORDINANCE NUMBER 831

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AMENDING CHAPTER 132 RELATING TO DRUG CONTROL RELATED TO THE SALE, USE, POSSESSION, INGESTION OR SMOKING OF CERTAIN SUBSTANCES AND THE SALE, USE, POSSESSION, OR CERTAIN DEVICES USED FOR THE INGESTION OF CERTAIN SUBSTANCES; CONTAINING A SAVINGS CLAUSE, REPEALING CLAUSE, AND PROVIDING A PENALTY FOR THE VIOLATION OF SUCH OFFENSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING THIS ORDINANCE IS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the Board of Commissioners of the City of Burkburnett has been informed by the Police Department that the American Association of Poison Control Centers and the U.S. Department of Justice have published articles and opinions on the dangers and physiological effects of K2 and similar substances, which are believed to pose a significant health concern to the citizens of the City of Burkburnett; and

**WHEREAS**, based upon further information from the Burkburnett Police Department, certain substances are sold under various names including but not limited to: "Salvia Divinorum", "Salvinorin An, "Spice", "Genie", "Dascents", "Zohai", "Sage", "K-2" and "KG Knock-out 2" and are likely to contain chemical compounds or otherwise cause effects similar to marijuana or hallucinogens and may cause harmful effects by their use and further, the long term effects are not yet known; and

**WHEREAS**, to the best of the Board of Commissioners of the City of Burkburnett's knowledge, the substances are not yet categorized as illegal controlled substances under state or federal law; and

**WHEREAS**, the Board of Commissioners of the City of Burkburnett finds that the effect of these substances can be a health concern to the citizens of the City of Burkburnett; and

**WHEREAS**, the Board of Commissioners of the City of Burkburnett, Texas, has determined that it is in the best interest of the public health, safety and welfare to prohibit the use, possession and sale of these substances and devices used to ingest these substances; and

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, THAT:**

### SECTION 1

The Code of the Ordinances of the City of Burkburnett, Texas, is hereby amended upon the date of passage of this Ordinance. The amendment of this Code or Ordinances shall not affect the prosecution of any violation which committed prior to the effective date of amendment.

## SECTION 2

A new ordinance, Illegal Smoking Products and Ingestion Devices is adopted and added to Chapter 132 related to General Offenses to prohibit the sale, use, purchase, possession, and offering for sale certain illegal smoking products and ingestion devices to read in its entirety as follows:

### SECTION 132.19 ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES

(A) *Definitions.* For the purposes of this section, the following terms, words, and derivations thereof shall have the following meaning:

*Person* shall mean an individual, corporation, partnership, wholesaler, retailer or any licenses or unlicensed business.

*Illegal Smoking Product* shall mean any plant other substance, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

- 1) Salvinorin A: Contained within the Salvia Divinorum plant, whether growing or not; or possessed as an extract, compound, manufacture, derivative, mixture, or preparation of such plant;
- 2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methylcatan-2-yl) phenol (also known as CP 47, 497) and homologues;
- 3) 1-Pentyl-3-(1-naphthol) indole (also known as JWH-O18); or
- 4) Butyl-3-(1-naphthol) indole (also known as JWH-073).

*Ingestion Device* shall mean equipment, a product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

- 1) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- 2) a water pipe;
- 3) a carburation tube or device;
- 4) a smoking or carburation mask;
- 5) a chamber pipe;
- 6) a carburetor pipe;
- 7) an electric pipe;
- 8) an air-driven pipe;
- 9) a chillum;
- 10) a bong; or
- 11) an ice pipe or chiller.

(B) Violation.

- 1) It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell or offer for sale any illegal smoking product.
- 2) It shall be unlawful for any person to use or possess an ingestion device with the intent to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.
- 3) Any person found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 132.99 of the Code of Ordinances of the City of Burkburnett for each offense. Every day a violation continues shall constitute a separate offense.
- 4) Allegation and evidence of a culpable mental state is not required for proof of an offense defined by this chapter.

(C) Affirmative Defense

- 1) It shall be an affirmative defense for a person charged with an offense for possession or use of an illegal smoking product that the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.
- 2) It shall not be a violation of this Ordinance if the sale or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.

**SECTION 3**

All provisions of the Code of Ordinances of the City of Burkburnett, codified or uncoded, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Burkburnett, codified or uncoded, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 4**

It is hereby declared to be the intention of the Board of Commissioners of the City of Burkburnett that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph, or section of this Ordinance.

**SECTION 5**

The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under an section or provisions at the time of passage of this ordinance.

**SECTION 6**

That this resolution shall take effect immediately from an after its adoption and publication.

**PASSED AND APPROVED** on this 21<sup>st</sup> day of January, 2013.

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Carl Law, Mayor

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Janelle Dolan, City Clerk



## City Commission Agenda Memo

**From:** Tim James, P.E. – City Manager

**Date:** January 21, 2013

**Item:** Review Annual Racial Profiling Report from the Police Department

### Background

State law requires that municipal law enforcement agencies adopt a written policy on racial profiling. Each law enforcement agency is also required to submit an annual report of the information collected under the racial profiling policy. There is no action required by the Commission for the review of the annual report.

### Fiscal Impact

N/A

### Options

N/A

### Staff Recommendation

There is no action required on this item.

### Attachments

Annual Racial Profiling Report



Partial Exemption Racial Profiling Reporting  
(Tier 1)

January 2012 - December 2012

BURKBURNETT POLICE DEPARTMENT

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Number of motor vehicle stops:

Mark only 1 category per vehicle stop

1. 861 Citation Only  
2. 0 Arrest Only  
3. 23 Both

4. 884 Total

Race or Ethnicity:

5. 71 African  
6. 5 Asian  
7. 743 Caucasian  
8. 58 Hispanic  
9. 2 Middle Eastern  
10. 5 Native American

11. 884 Total

Race or Ethnicity known prior to stop?

12. 0 Yes  
13. 884 No

14. 884 Total

Search Conducted?

15. 26 Yes  
16. 858 No

17. 884 Total

Was search consented?

18. 18 Yes  
19. 8 No

20. 26 Total Must equal #15

# RACIAL PROFILING ANALYSIS

January 2012 - December 2012

BURKBURNETT POLICE DEPARTMENT  
208 EAST 4TH STREET  
BURKBURNETT, TX 76354

Race/Ethnicity	Contacts		Searches		Consent Searches		PC Searches		Custody Arrest	
	N	%	N	%	N	%	N	%	N	%
Caucasian	743	84.0%	22	84.6%	15	83.3%	7	87.5%	21	91.3%
African American	71	8.0%	3	11.5%	2	11.1%	1	12.5%	1	4.3%
Hispanic	58	6.6%	1	3.8%	1	5.6%	0	0.0%	1	4.3%
Asian	5	.6%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Native American	5	.6%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Middle Eastern	2	.2%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
<b>Total</b>	<b>884</b>		<b>26</b>		<b>18</b>		<b>8</b>		<b>23</b>	