

ORDINANCE NO. 2024 - ____

AN ORDINANCE AMENDING THE CITY OF NEW BRAUNFELS, TEXAS, CODE OF ORDINANCES, CHAPTER 1, SECTION 1-8, GENERAL PENALTY; ADJUDGING FINES; CONTINUING VIOLATIONS, TO INCREASE PENALTIES IN ACCORDANCE WITH STATE LAW AMENDMENTS; PROVIDING FOR REPEALER, SEVERABILITY, SAVINGS CLAUSE, AND EFFECTIVE DATE.

WHEREAS, the City Council has previously enacted an ordinance in 1999 that set the general penalty for all ordinances that do not adopt a separate penalty; and

WHEREAS, state law increased the maximum fine that can be assessed for violations related to illegal dumping from the \$2,000 to \$4,000, as provided in the Texas Local Government Code, Section 54.001(b)(2), and the City ordinance should be amended to reflect current state law maximum limits; and

WHEREAS, the Texas Penal Code, Section 12.23 requires a culpable mental state of the defendant to establish criminal responsibility when an ordinance violation carries a fine over \$500.00;

WHEREAS, some ordinances do not specify a culpable mental state and carry a fine in excess of \$500.00, so this amendment would specify that the culpable mental state of recklessness must be proven for criminal responsibility to apply; and

WHEREAS, the City Council of the City of New Braunfels finds that these ordinance amendments are reasonably necessary to preserve the health, safety and welfare of its citizens and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2: That Section 1-8, titled “General penalty; adjudging fines; continuing violations”, of the New Braunfels Code of Ordinances shall be amended to hereinafter read as follows with new language indicated by underlined font and deleted language indicated by strikethrough font:

- (a) It shall be unlawful for any person to violate or fail to comply with any provision of this Code, and where no specific penalty is provided therefor, the violation of any provision of this Code shall be punished by a fine not exceeding \$500.00. However, a fine or penalty for the violation of a provision of this Code that governs fire safety, zoning, or public health and sanitation, ~~including other than the~~ dumping of refuse, may not exceed \$2,000.00. A fine or penalty for the violation of a provision of this Code that governs the dumping of

refuse may not exceed \$4,000.00, as authorized by the Texas Local Government Code, §54.001(b)(2), and as state law may be amended in the future.

- (b) Where a fine provided in this Code is for an offense for which the state law imposes a fine, the fine imposed by the municipal court shall be the same as the fine for such like offense under the state law. Each day any violation of any provision of this Code shall continue shall constitute a separate offense.
- (c) Where no specific culpable mental state is otherwise provided, it is hereby declared that the culpable mental state required by V.T.C.A., Penal Code § 6.02 is specifically negated and clearly dispensed with, and such offense is declared to be a strict liability offense-, except that any violation of this Code that is punishable by a fine that exceeds \$500.00 shall require a culpable mental state of reckless. The provisions of this subsection are hereby incorporated by reference into the definition of all current and future ordinance created offenses situated throughout this Code where no specific culpable mental state is specified.

(Code 1961, § 1-8; Ord. No. 99-54, § I, 8-9-99)

State law reference(s)—Penalties for violation of ordinances, V.T.C.A., Local Government Code § 54.001.

SECTION 3: Repealer.

All provisions of the New Braunfels Code of Ordinances, or other ordinances, whether codified or uncodified, in conflict with the provisions of this ordinance are hereby repealed, and all other provisions of the Code of Ordinances or other ordinances, codified or uncodified, not in conflict with the provisions of the ordinance shall remain in full force and effect.

SECTION 4: Severability

It is hereby declared to be the intention of the City Council 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: Savings Clause.

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 any section or provisions at the time of passage of this ordinance.

SECTION 6: Publication and Effective Date.

As required by the City Charter, Sec. 3.10, any ordinance imposing a criminal penalty for any violation shall be published in the newspaper and shall take effect ten (10) days after its publication.

PASSED AND APPROVED: First reading this _____ day of _____, 2024.

PASSED AND APPROVED: Second reading this _____ day of _____, 2024.

CITY OF NEW BRAUNFELS, TEXAS

By: _____
Neal Linnartz, Mayor

ATTEST:

Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney