

ORDINANCE NO. 2025- ____

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING CHAPTER 126, ARTICLE VII-PARKING, DIVISION 2, DECLARING CERTAIN PARKING VIOLATIONS ARE CIVIL OFFENSES, SUBJECT TO FINES, IMMOBILIZATION AND IMPOUNDMENT OF VEHICLES; AUTHORIZING HEARING OFFICERS; ESTABLISHING PROCEDURES FOR ENFORCEMENT, HEARINGS AND APPEALS; CREATING CRIMINAL PENALTY FOR IMPEDING ENFORCEMENT; REPEALING ALL LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE.

Whereas, Chapter 682 of the Texas Transportation Code authorizes a municipality with a population of more than 30,000 that operates under a council-manager form of government such as the City of New Braunfels, to declare parking violations civil offenses instead of criminal offenses; and

Whereas, pursuant to this state law, the New Braunfels City Council desires to make this declaration and adopt an administrative adjudication hearing procedure under which a civil fine may be imposed for parking and stopping offenses; and

Whereas, the Municipal Court, Police Department, prosecutors, and other city staff have experienced difficulty in the investigation, prosecution and collection of fines for these offenses; and

Whereas, decriminalizing certain parking offenses should allow for a better visitor experience, and result in increased compliance through education and enforcement by authorized parking enforcement agents by and upon the authority of City Council.

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

SECTION 1: That Chapter 126 “Traffic and Vehicles” Ordinance VII “Parking”, Division 2, is amended to include the following provisions beginning with Section 126-357.1:

ARTICLE VII. - PARKING

DIVISION 2. PROHIBITED PARKING AND ADMINISTRATIVE ADJUDICATION OF CERTAIN PARKING VIOLATIONS.

Sec. 126-357.1 - Parking violations made civil offenses; hearing.

(a) A violation of a provision of the Code of Ordinances governing stopping, standing or parking (hereinafter referred to as “parking”) of a vehicle as listed below is designated as a civil offense:

- 1) Parking a vehicle in a paid public parking space without fee payment;
- 2) Parking a vehicle in a paid public parking space outside the delineated parking space; and
- 3) Parking a vehicle in a paid public parking space that is legally occupied by another vehicle.

(b) A violation of a provision of this civil parking ordinance pertaining to interference with enforcement, immobilization or impoundment is a criminal offense as provided in Sec. 126-360.

(c) A person charged with violating a stopping, standing or parking ordinance related to public paid parking space as listed in paragraph (a) is entitled to an administrative adjudication hearing as provided in this ordinance. This hearing shall take place no later than ten (10) business days following the date upon which a citation is issued. Procedures governing said hearings are set forth later in this ordinance.

(d) The City manager is authorized to implement and enforce the provisions of this ordinance or to delegate to city staff or any other authorized parking enforcement agent.

Sec. 126-357.2 - Parking citations; Notices.

(a) A parking citation may be issued by any parking enforcement agents or city employees authorized by the city manager.

(b) A parking citation serves as summons and notice of the administrative adjudication hearing under this ordinance.

(c) If the owner or operator of the vehicle is not present at the time the citation is issued, the person issuing the citation may affix the citation to the vehicle in a conspicuous place.

(d) The citation shall include:

- (1) the charged offense;
- (2) the date, time and location of the violation;
- (3) the make, model and license plate number of the vehicle, or if the license number is not visible or legible, the vehicle identification number or state inspection number in lieu of the license number;
- (4) notice of the recipients right to an instant hearing within fifteen (15) calendar days of the date of the violation, that such right shall be exercised by either requesting a hearing by mail postmarked within ten (10) calendar days of the date of citation or sent by email, and the hours instant hearings are available; and,
- (5) notice that failure to either answer the citation in writing within ten (10) calendar days or to appear at the hearing is considered an admission of liability for the parking violation and will result in the assessment of civil fines, costs, and fees.

Sec. 126-357.3 - Liability of vehicle owner; presumptions and defenses.

(a) Liability for stopping, standing or parking citation:

(1) The registered owner and the operator of the vehicle, when not the same, are both liable to the city for the parking citation. Payment of the civil fine, costs, and fees by either the owner to operator is a final disposition of the charged violation.

(b) In any administrative adjudication hearing under this ordinance:

(1) It is a rebuttable presumption that the registered owner of the motor vehicle was the person who parked or stopped the vehicle at the time and place of the parking offense charged.

(2) A computer-generated record of the registration of the vehicle with the Texas Department of Transportation showing the name of the person to whom the state license plates were issued is prima facie evidence of vehicle ownership.

(3) It is a defense to a parking violation charge that at the time of the violation, the illegally parked vehicle was reported to a police department as having been stolen before the time of the violation and had not yet been recovered.

(4) Payment of parking fee is not a defense. A vehicle owner or operator's payment of any civil parking fee is not a defense to any parking related offense or violation found in this article.

(c) The original or any copy of the citation, including an electronic copy, shall be kept by the authorized parking enforcement agent of the City as a record in the ordinary course of business of the City of New Braunfels and is rebuttable proof of the facts it contains.

(d) A person who fails to either answer the citation in writing within ten (10) calendar days or appear at the hearing is considered to admit liability to the offense charged and may result in the assessment of civil fines, costs, and fees.

Sec. 126-357.4 - Fines for parking violations.

(a) A person who is charged for an offense under this division shall be liable for a civil penalty of \$100.00 which will be due within thirty (30) calendar days of the date of issuance of a citation. Payments may be remitted online or by U.S. Mail. A payment remitted by mail will be considered remitted on the postmarked date.

(b) Any fine paid within ten (10) calendar days of the violation will be reduced to \$65.00.

(c) Any fine paid after thirty (30) calendar days may be assessed an additional late fee of up to \$65.00.

(d) In addition to the fines provided in subsection (a), a vehicle with three or more unpaid adjudicated parking violations within a calendar year may be either immobilized by the attachment of a vehicle immobilizing device or impounded and towed to a vehicle storage facility at the owner's expense in accordance with the provisions of this ordinance. In cases that the Chief of Police deems it necessary to protect the health, safety and welfare of citizens, the Chief is also authorized to order the immediate towing of such vehicle. This ordinance does not apply to incident management tows.

(e)The City authorizes the parking enforcement agent, as designated by the City Manager, to accept all payments under this ordinance, including fines, costs and fees.

Sec. 126-358.1 - Hearing officer; powers; duties; functions.

- (a) One or more hearing officers shall be appointed by the City Manager or designees to administratively adjudicate all parking violations for which is parking citation is issued under this ordinance. A Hearing Officer shall have authority to:
- (b) The Hearing Officer shall have the authority to:
 - (1) Hear and determine contest of parking violations under this code;
 - (2) Issue orders enforceable by the municipal court compelling the attendance of witness and the production of documents;
 - (3) Administer oaths;
 - (4) Issue orders of immobilization or impoundment of vehicles;
 - (5) Set conditions for the release of vehicles immobilized or impounded under this chapter;
 - (6) Reduce fines, costs, or fees; and
 - (7) Dismiss parking citations or cases that are unenforceable.

Sec. 126-358.2 - Hearings.

- (a) At a hearing before a Hearing Officer, the defendant may either admit, admit with explanation, or deny the alleged violation.
- (b) The issuing parking enforcement agent is not required to attend the hearing.
- (c) The City's prosecuting attorney is not required to attend the hearing. However, if the defendant is represented by legal counsel, the Hearing Officer must notify the prosecuting attorney, who shall have the right to appear on behalf of the City at the hearing.
- (d) No formal or sworn complaint shall be necessary. The Hearing Officer shall base their decision upon an examination of the contents of the citation or summons and the evidence related to ownership of the vehicle in question, the presumptions and other prima facie evidence established by this ordinance and other applicable law, and the evidence and testimony presented by the defendant and the City. If the Hearing Officer determines by a preponderance of the evidence that the defendant is liable for the violation, the Hearing Officer shall find the defendant liable.

- (e) At the conclusion of the hearing, the Hearing Officer shall issue an order stating whether the defendant is liable for the violation of this ordinance and the amount, if any, of civil fines, costs or fees assessed against the defendant.
- (f) All orders issued by the Hearing Officer shall be filed electronically with the City Secretary's Office.
- (g) Failure of a defendant to appear by mail or personal appearance within the aforesaid thirty (30) calendar day period shall be considered an admission of liability for the charged offense. Such defendant shall be liable for the civil fines, costs and fees assessed by order of the Hearing Officer.

Sec. 126-358.3. Appeal from hearing.

- (a) A person determined by a Hearing Officer to be liable for a parking violation may appeal the determination by filing a petition with the Municipal Court, along with any other costs required by law for Municipal Courts not later than thirty (30) calendar days after the Hearing Officer's order is filed with the City Secretary's Office.
- (b) Upon receipt of an appeal petition, the Municipal Court shall schedule an appeal hearing and notify all parties of the date, time, and location of the hearing.
- (c) The appeal hearing shall be a de novo review by the Municipal Judge. Based upon the evidence presented at the appeal hearing and if the Judge determines by a preponderance of the evidence that the defendant committed the violation, the Judge shall find the defendant liable therefore.
- (d) Service of notice of appeal under this section does not stay the enforcement and collection of any order of a Hearing Officer, unless the person filing the appeal posts with the Municipal Court an appeal bond in an amount equal to all civil fines, costs and fees assessed by the Hearing Officer.

Sec. 126-358.4. Enforcement of Order.

- (a) A Hearing Officer's order filed under this ordinance may be enforced by:
 - (1) Impounding the vehicle that is the subject of the order;
 - (2) Immobilizing by placing a device that prohibits movement on the vehicle that is the subject of the order;
 - (3) Imposing an additional fine as set out by this section if not paid within the specified time;
 - (4) Denying issuance of or revoking a parking or operating permit, as applicable; or
 - (5) Filing an action to collect the fine, cost, or fee in a court of competent jurisdiction.
- (b) Provided, however, that no vehicle shall be impounded or immobilized under this section unless:

- (1) The person liable under this section has three or more delinquent unpaid citations in a calendar year; and
- (2) Written notice is mailed to the last known registered owner of the vehicle by certified mail at least ten (10) business days before the vehicle is impounded or immobilized notifying the registered owner that the vehicle is subject to impoundment or immobilization under this section. Said notice shall also notify the registered owner of their right to submit information to a Hearing Officer regarding the propriety of impoundment or immobilization.

Sec. 126-358.5. Procedures for impoundment and immobilization.

- (a) When a vehicle is found parked, whether legally or illegally, at any time upon a public street or public property within the City, and such vehicle has met the criteria for immobilization or impoundment as provided in Section 126-358.4(b), any authorized employee or parking enforcement agent designated by the City Manager may immobilize the vehicle by the installation on, or attachment to, the vehicle of a device, barnacle, or boot, designed to prohibit the movement of the vehicle.
- (b) At the time of immobilization, the person executing the immobilization shall attach to the vehicle a written notice on a form provided by the designated parking enforcement agent of the City that includes the following information:
 - (1) Notice that the vehicle has been immobilized pursuant to this section and that attempted movement may cause damage to the vehicle;
 - (2) Instructions as to release of the vehicle;
 - (3) Notice that the owner or operator may request a hearing regarding the immobilization within ten (10) business days following the date of immobilization; and
 - (4) Notice that the vehicle may be towed and impounded if the owner or a person authorized to act on behalf of the owner does not obtain a release of the vehicle within twenty-four (24) hours following the immobilization.
- (c) Notice that failure to request or appear at a hearing as provided in Subsection (b)(3) of this section waives any objection to the proposed impoundment or immobilization of the vehicle.
- (d) In the event that the vehicle is towed and impounded, the owner shall be responsible for payment of applicable fees for towing, impoundment and storage in addition to the fines, costs and fees under this section.
- (e) An additional \$50 fee will be due for immobilized or impounded vehicles.
- (f) This section is to be cumulative of existing law, and nothing herein shall be construed to restrict or limit the right to tow and impound vehicles under other applicable law.

Sec. 126-358.6 - Reclaiming immobilized or impounded vehicles.

- (a) The owner or a person with the right to possession of a vehicle which has been immobilized under this ordinance may reclaim the vehicle by contacting the on-duty parking enforcement

agent at the phone number listed on the citation. To retrieve an impounded vehicle, the owner or a person with the right to possession of a vehicle needs to contact the tow company at the phone number identified on the tow away sign. Before release of the vehicle, the owner or person with right to possession of the vehicle must meet the requirements:

- (1) Present satisfactory evidence of the person's identity and of the person's ownership or right to possession of the vehicle; and
 - (2) Pay the accumulated amount of fines, costs and fees related to the vehicle.
- (b) Upon compliance with subsection (a), the person will be authorized to reclaim the impounded vehicle or to have the immobilization device removed.
- (c) The Hearing Officer, Municipal Court Judge or their designees, are authorized to issue a written order releasing an impounded vehicle to its owner or to a person determined to have the right to possession of the vehicle. Nothing in the order shall authorize or imply the waiving of costs and fees associated with the impoundment and storage of the vehicle.
- (d) Upon payment to the parking enforcement agent and vehicle storage facility of all impoundment and storage fees, presentment of either a signed release from the Hearing Officer, Municipal Court Judge or their designees and proof of identity to the person in possession of the vehicle, the impounded vehicle shall be released to the person indicated in the release.

Sec. 126-360. - Interference with enforcement.

- (a) It is unlawful for any person to obstruct, prevent, hinder or interfere with any person engaged in enforcing the provisions of this ordinance. Unlawful interference may include, but is not limited to such actions as:
- (1) obstructing, preventing, hindering or interfering with any person executing an order of immobilization and impoundment; or
 - (2) tampering with, defacing, or damaging an immobilization device, or attempting to remove the device when it has been installed; or
 - (3) removing, erasing, tampering with or defacing marks made by parking enforcement agents to note the time or location vehicle was found; or
 - (4) removing, destroying or defacing a citation from another vehicle; or
 - (5) cause or permit placing a citation from another vehicle on one's vehicle.
- (b) Police officers are authorized to issue citations for violations of this section of the ordinance. Violations of this section will be deemed a class C misdemeanor and subject to

criminal prosecution in municipal court. Penalty for violation of this section shall not exceed \$500.00.

SECTION 2: This Ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to parking within the City of New Braunfels, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this Ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 3: That if any provisions of this Ordinance shall be held void, illegal, or unconstitutional, it is hereby provided that all other parts of the same which are not held void, illegal or unconstitutional shall remain in full force and effect.

SECTION 4: EFFECTIVE DATE AND PUBLICATION:

This Ordinance shall become adopted upon its second reading, signature, and filing with the City Secretary's Office; however, it will not take effect until it has been published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels.

PASSED AND APPROVED: First reading this _____ day of March, 2025.

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CITY OF NEW BRAUNFELS, TEXAS

NEAL LINNARTZ, Mayor

ATTEST:

Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney