

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 86 OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS, ARTICLES V AND VI, SECTIONS 86-101 THROUGH 86-119 BY CLARIFYING DAYS WRISTBANDS ARE REQUIRED; AMENDING SECTION 86-104 CHANGING THE DATE BY WHICH UNUSED WRISTBANDS MUST BE RETURNED; AMENDING SECTION 86-105 CLARIFYING STAFF RESPONSIBILITY; AND AMENDING SECTION 86-116 BY ADDING A DEFINITION FOR HOLIDAY AND CHANGING RESIDENT PASS VALIDITY FROM ONE YEAR TO THREE YEARS; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels, Texas has determined that there are serious health and safety issues relating to the portions of the Comal and Guadalupe rivers located within the corporate territorial limits of the City of New Braunfels, Texas; and

WHEREAS, the City Council of the City of New Braunfels, Texas has the authority under its Home Rule Charter and under the laws of the State of Texas to adopt regulations aimed to protect the health, safety, morals or general welfare of its citizens; and

WHEREAS, the City Council of the City of New Braunfels, Texas has determined that certain conduct, including, but not limited to: that which is lewd and rowdy; that which contributes to litter; and that which otherwise violates the lawfully enacted ordinances of the City of New Braunfels, Texas or the laws of the State of Texas is unsafe and unhealthy; and

WHEREAS, the City Council of the City of New Braunfels, Texas has determined that excessively large crowds in areas where there exist water recreation facilities create a potential human health and safety hazard and is unsafe and unhealthy; and

WHEREAS, the City Council of the City of New Braunfels, Texas has determined that regulating certain unsafe and unhealthy conduct on the portions of the Comal and Guadalupe rivers located within the corporate territorial limits of the City of New Braunfels, Texas bears a substantial relationship to the public health, safety, morals, or general welfare; and

WHEREAS, the City Council of the City of New Braunfels, Texas has determined that the costs associated with regulating certain unsafe and unhealthy conduct on the portions of the Comal and Guadalupe rivers located within the corporate territorial limits of the City of New Braunfels, Texas places an unfair burden on the residents of the City of New Braunfels, Texas; and

WHEREAS, the City Council of the City of New Braunfels, Texas has determined that the costs associated with regulating certain unsafe and unhealthy conduct on the portions of the Comal and Guadalupe rivers located within the corporate territorial limits of the City of New Braunfels, Texas should be borne by the individuals necessitating said costs; and

WHEREAS, in 2011, the City Council of the City of New Braunfels, Texas determined that it was necessary to implement a river management fee intended to be paid by the individuals renting water-oriented recreational equipment, using water recreation shuttle vehicles, utilizing public river exits or certain public park property located within the corporate territorial limits of the City of New Braunfels, Texas in order to generate funds to offset costs associated with and attributable to the regulation of certain unsafe and unhealthy conduct on said rivers within the corporate territorial limits of the City of New Braunfels, Texas; and

WHEREAS, the City Council has previously found it necessary to extend the river management fee to non-resident private tubers that utilize certain City owned public park property and public river exits.

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. AMENDMENTS.

That Chapter 86, Articles V and VI, of the New Braunfels Code of Ordinances shall be amended to read as follows, with new language indicated below by use of underlined font:

ARTICLE V. - RIVER ACTIVITY WRISTBANDS

Sec. 86-99. - Definitions.

Public exit means Cypress Bend Park, Lincoln Street River Exit, Garden Street River Exit and the City Tube Chute.

Water-oriented recreational equipment means tubes, kayaks, rafts, canoes and all other forms of personal watercraft.

Sec. 86-100. - Requirements for rental of water-oriented recreational equipment.

It shall be the duty and responsibility of any person, firm, partnership or corporation in the City of New Braunfels that rents water-oriented recreational equipment for use on the Comal and Guadalupe rivers to mark that equipment to prominently display the name and/or logo of the person, firm, partnership or corporation renting the equipment.

- (1) All lettering and logos must be at least four inches in height and be easily visible from a distance of more than 20 feet.
- (2) Any person, firm, partnership or corporation renting water-oriented recreational equipment shall keep a written record of the name, date of birth and address of all customers renting said equipment and shall provide such information to the City upon written request with five days notice.

Sec. 86-101. - Wristband; public exits, City Tube Chute, Prince Solms Park, Hinman Island Park.

Beginning Memorial Day weekend and concluding Labor Day of each year, all persons in possession of water-oriented recreational equipment on the premises known as the City Tube Chute, Prince Solms Park, Hinman Island Park or using public exits on the Comal or Guadalupe Rivers, must be wearing a city-issued wristband signifying their payment of the river management fee that is charged on holidays and weekends. An individual bearer of a wristband is strictly prohibited from transferring said wristband to any other individual or business for reuse. Failure to comply with these provisions shall result in criminal and civil penalties.

- (1) It shall be the duty and responsibility of any person, firm, partnership or corporation renting water oriented recreational equipment to make certain their customers pay the required river management fee and are issued and wearing a city-issued wristbands when entering the City Tube Chute, Prince Solms Park, Hinman Island Park or using public exits on the Comal and Guadalupe Rivers. If an outfitter or operator runs out of city issued wristbands but continues to operate, they will be in violation of this section and will be subject to criminal and civil penalties.
- (2) Residents with a valid resident pass and outfitter guests, (friends and family who do not pay a fee for rental of water-oriented recreational equipment or shuttle transportation,) will be issued a wristband, specified by the city, to show that they are considered a non-paying guest or New Braunfels resident. The proper city-issued wristband must be worn when entering the City Tube Chute, Prince Solms Park, Hinman Island Park or using public exits on the Comal and Guadalupe Rivers. Failure to comply with these provisions shall result in criminal and civil penalties.
- (3) Guests in possession of non-rented water-oriented recreational equipment entering the City Tube Chute, Prince Solms Park, Hinman Island Park will be issued a wristband, specified by the city, to show that they are considered a non-paying guest or New Braunfels resident and charged a river management fee if appropriate.

Sec. 86-102. - Wristbands; water recreation shuttles.

All persons riding in a city-permitted water recreation shuttle being transported from locations on the Comal River and Guadalupe River down river from the Gruene Road Bridge within the city limits of New Braunfels, on holidays and weekends beginning Memorial Day weekend and concluding Labor Day of each year, shall be wearing a city-issued wristband.

- (1) It shall be the duty and responsibility of shuttle outfitters and operators to make sure that all passengers are wearing city-issued wristbands. If an outfitter or operator runs out of city-issued wristbands but continues to operate, they will be in violation of this section and will be subject to criminal and civil penalties.
- (2) Outfitter guests, friends and family who do not pay a fee for rental of equipment or shuttle transportation, will be issued a wristband, specified by the city, to show that they are considered a non-paying guest. The proper city-issued wristband must be worn by the individual while on the shuttle and when entering the City Tube Chute, Prince Solms Park, Hinman Island Park or using public exits on the Comal and Guadalupe Rivers. Failure to comply with these provisions shall result in criminal and civil penalties.
- (3) Water recreation shuttles may be stopped and audited at any time to ensure compliance with this provision.

Sec. 86-103. - Wristband; design, consignment.

It shall be the duty and responsibility of the city to determine the color, design and type of the required wristbands. The cost of the city-issued wristbands shall be set by the city to allow for change from time to time. Wristbands will be issued to water-oriented recreational businesses on a consignment basis. City staff will establish procedures for the distribution of wristbands, collection of fees, and return of unused wristbands. The city has the right to limit liability of consignment.

Sec. 86-104. - Wristband; distribution, payment.

The city shall be the sole distributor of the city-issued wristbands. Any water-oriented recreational business, which shall include a person, firm, partnership or corporation, can obtain the city-issued wristbands on a consignment basis at specified city offices during regular business hours (Monday through Friday, 8:00 a.m.—5:00 p.m.) as established in the city's written procedures. The outfitter or operator who receives distribution of consignment wristbands is strictly prohibited from transferring or selling any of their city-issued wristbands to any other outfitter or operator of a water-oriented recreational business. Any such person, firm, partnership or corporation that receives consignment wristbands must remit payment calculated by multiplying the number of wristbands unreturned to the city by the deadline by the effective rate of river management fees. Payment is due the 15th of the month following receipt of consignment wristbands. Failure to pay timely shall result in suspension of participation in the city's consignment wristband program, as well as criminal and civil penalties.

All unused wristbands must be returned to the city by September 15th. Failure to comply with this provision shall result in suspension of further participation in the city's consignment wristband program, as well as criminal and civil penalties.

Sec. 86-105. - Civil penalty.

- (a) Any person, firm, partnership or corporation who shall violate any provision of this section or who fails to comply therewith shall be subject to a fine of \$100.00 per person found to be without a proper city-approved wristband. Any person, firm, partnership or corporation failing to pay civil penalties within seven calendar days of receipt of notice will be prohibited from further participation in the city's consignment wristband program, as determined by the River Operations Manager. In addition, their water recreation shuttle permit shall be immediately suspended or revoked, as determined by the City Manager or designee. Notice shall be deemed received if sent certified mail return receipt requested.
- (b) If any person, firm, partnership or corporation disputes any alleged violation under subsection 86-105(a), they shall have the right to appeal the decision of the city. Application for appeal shall be filed by the applicant in writing to the city secretary's office within five business days of the adverse decision. A nonrefundable appeal fee in the amount of \$50.00 shall be paid before an appeal may be heard. If a timely appeal is made, the prohibition, suspension or revocation shall be stayed until the city manager has made a final determination.

Sec. 86-106. - Criminal penalty.

a) No culpable mental state required. The culpable mental state required by chapter 6.02 of the Texas Penal Code is hereby specifically negated. The offenses under this article shall be strict liability offenses.

b) In addition to any above stated prohibitions, suspensions or revocations, any person, firm, partnership or corporation who shall violate any provision of this article or who failed to comply therewith shall be deemed guilty of a Class C misdemeanor and upon conviction, shall be subject to a fine. Nothing in this section shall be construed as to limit any civil action the city may take to enforce the terms of this article.

(c) A person convicted of an offense under any portion of this article shall be fined in accordance with the following:

- (1) First offense shall have a minimum fine of \$100.00 and a maximum fine of \$500.00;
- (2) Second offense shall have a minimum fine of \$200.00 and a maximum fine of \$500.00;
and
- (3) Third and subsequent offenses shall have a minimum fine of \$500.00.

Each day's violations shall constitute a separate and distinct offense. Any prior conviction under this article will count towards a second and third charge regardless of when it occurred.

Secs. 86-107—86-115. - Reserved.

ARTICLE VI. - RIVER MANAGEMENT FEE

Sec. 86-116. - Definitions.

Holiday means any City-recognized holiday. If the holiday is on a Tuesday, then the previous Monday will be considered a holiday as well. If the holiday is on a Thursday, then the following Friday will be considered a holiday as well.

Outfitter means any person, firm, partnership, or corporation that rents water-oriented recreational equipment for use on the Comal and Guadalupe Rivers within the city limits.

Passenger means any person transported on a city-permitted water recreation shuttle.

Public river exit means Cypress Bend Park, Lincoln Street River Exit, Garden Street River Exit, Hinman Island Park, City Tube Chute and any other city-owned right-of-way or property with frontage on the Comal or Guadalupe Rivers currently not leased to another entity.

Rental customer means any person who rents water-oriented recreational equipment.

Resident means any person residing within the corporate city limits of the city.

Resident pass means a pass issued by the City of New Braunfels to a resident of the city. A resident pass is valid for three calendar years.

River management fee means that fee which is paid by the individuals using water recreation shuttle vehicles, public river exits or certain public park property located within the corporate territorial limits of the city and which shall be collected by river outfitters and remitted to the city.

River outfitter means any outfitter lawfully authorized to operate water recreation shuttles on the Comal and Guadalupe Rivers in the city.

Shuttle operator means any person, firm, partnership, or corporation that is required by city ordinance to hold a city issued water recreation shuttle permit who transports passengers from locations on the Comal River and Guadalupe River down river from the Gruene Road bridge within the city limits.

Water-oriented recreational equipment means tubes, kayaks, rafts, canoes and all other forms of personal watercraft.

Water recreation shuttle shall have the meaning as described by chapter 138, article VI.

Sec. 86-117. - Public river exits.

An outfitter that rents water-oriented recreational equipment for use on the Comal and Guadalupe Rivers within the city limits shall collect from each rental customer, except customers that present a valid resident pass, and remit to the city \$2.00 for each such customer utilizing any public river exit, unless said outfitter has already collected from that customer, the river management fee as a shuttle passenger. No rental customer or shuttle passenger shall be required to pay a river management fee in excess of \$2.00 a day. A river management fee is valid only for the date that it is collected. The river management fee will only be charged on holidays and weekends beginning Memorial Day weekend and concluding on Labor Day.

Sec. 86-118. - Water recreation shuttles.

Any shuttle operator operating within the city limits shall collect from each shuttle passenger, except customers that present a valid resident pass, and remit to the city \$2.00 for each shuttle passenger transported from locations on the Comal River and Guadalupe River down river from the Gruene Road bridge within the city limits, unless said shuttle operator has already collected from said customer a river management fee for the rental of water-oriented recreational equipment. No rental customer or shuttle passenger shall be required to pay a river management fee in excess of \$2.00 a day. A river management fee is valid only for the date that it is collected. The river management fee will only be charged on holidays and weekends beginning Memorial Day weekend and concluding Labor Day.

Sec. 86-119. - Fee payment; reports.

Fees shall be remitted to the city and a report filed for each month beginning Memorial Day weekend and concluding Labor Day of each year. Any person, firm, partnership or corporation subject to this article shall prepare a written monthly report containing a numerical count for each calendar day of its rental customers or passengers, as well as a total count for each month, together with a calculation of the amount due based on \$2.00 per person. Any person, firm, partnership or corporation subject to this article shall maintain a written daily log of resident passes for which wristbands were issued which will be collected by or electronically submitted to a representative of the River Operations Manager. The appropriate fee must be delivered to the parks and recreation department office no later than 15 calendar days following the end of each monthly reporting period. All fees remitted under this section shall be placed in a separate fund for the purpose of protecting and maintaining the health, safety, morals and general welfare of persons, and

regulating unsafe or unhealthy activities on those portions of the Comal and Guadalupe Rivers located within the corporate territorial limits of the city.

Sec. 86-120. - Suspension of use of public river exits; suspension or revocation shuttle permit; hearing.

- (a) *Suspension.* Any person, firm, partnership or corporation ("violator") failing to remit fees, timely submit the monthly report, or violates any other provision of this article shall be prohibited from using any public river exit and if the violator is a shuttle operator it shall have its water recreation shuttle permit suspended or revoked by the city secretary until such time the violator comes into compliance.
- (b) *Notice.* Prior to this, the city secretary shall issue written notice of the proposed action. The notice shall include the date of the violation as well as a brief description of the facts giving rise to the propose action. The notice shall also include the effective date of the revocation or suspension. The notice will also advise the violator of the right to appeal his decision to the city manager as outlined below.
- (c) *Appeal.* Any decision to deny use of public river exit or to suspend or revoke a shuttle permit may be appealed to the city manager for final determination. The appeal must be made in writing ten calendar days from receipt of the notice of revocation or suspension and filed with the city manager's office. The filing of a notice of appeal shall stay the revocation or suspension until a final decision is rendered by the city manager.
- (d) *Hearing.* Upon notice of appeal, the city manager shall schedule a hearing as soon as reasonably practical. The hearing shall be held at the New Braunfels Municipal Building. The parties may appeal pro se (representing themselves) or be represented by an attorney. The only issue to be decided at the hearing is whether any violation of this article occurred that would justify the prohibition of use of public river exits, or suspension or revocation of shuttle permit. The standard review shall be a preponderance of the evidence. All decisions made by the city manager shall be in writing and considered a final decision. The Texas Rules of Evidence, Texas Rules of Civil Procedure and the Texas Administrative Procedures Act do not apply to the hearing.

Sec. 86-121. – Criminal Penalty.

- (a) No culpable mental state required. The culpable mental state required by chapter 6.02 of the Texas Penal Code is hereby specifically negated. The offenses under this article shall be strict liability offenses.
- (b) In addition to any above stated prohibitions, suspensions or revocations, any person, firm, partnership or corporation who shall violate any provision of this article or who failed to comply therewith shall be deemed guilty of a Class C misdemeanor and upon conviction, shall be subject to a fine. Nothing in this section shall be construed as to limit any civil action the city may take to enforce the terms of this article.
- (c) A person convicted of an offense under any portion of this article shall be fined in accordance with the following:
 - (1) First offense shall have a minimum fine of \$100.00 and a maximum fine of \$500.00;

- (2) Second offense shall have a minimum fine of \$200.00 and a maximum fine of \$500.00; and
- (3) Third and subsequent offenses shall have a minimum fine of \$500.00.

Each day's violations shall constitute a separate and distinct offense. Any prior conviction under this article will count towards a second and third charge regardless of when it occurred.

SECTION 3: All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 4: 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 5: In accordance with the provisions of Section 3.10 of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 6: This Ordinance shall become adopted and effective upon its final reading and must be 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 on the _____ day of _____, 2018.

PASSED AND APPROVED: Second Reading on the _____ day of _____, 2018.

CITY OF NEW BRAUNFELS, TEXAS

By: _____
Barron Casteel, Mayor

ATTEST:

Patrick Aten, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney