
ORDINANCE NO. 2022 - ____

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING SECTION 86-99 THROUGH 86-121 OF THE NEW BRAUNFELS CODE OF ORDINANCES; REPEALING ALL LAWS IN CONFLICT; PROVIDING A SAVINGS CLAUSE AND SEVERABILITY; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, THE DEFINITION OF HOLIDAY NEEDS TO BE CLARIFIED DUE TO THE ADDITION OF JUNETEENTH AS A CITY-RECOGNIZED HOLIDAY.

WHEREAS, THE DEFINITION OF A RIVER OUTFITTER NEEDS TO BE CLARIFIED DUE TO DEFINITIONS FOR BOTH A RIVER OUTFITTER AND OUTFITTER CURRENTLY EXISTING IN THE CODE OF ORDINANCES.

WHEREAS, THE ORDINANCE NEEDS TO BE UPDATED TO REFLECT CURRENT OPERATIONAL PRACTICES.

WHEREAS, THE RIVER ADVISORY COMMITTEE MET ON NOVEMBER 18, 2021 AND RECOMMENDED APPROVAL FOR CHANGES OF A SUBSTANTIALLY FINAL FORM OF THIS ORDINANCE WITH EXCEPTION OF THE RECOMMENDED REVISED DEFINITION OF A HOLIDAY.

WHEREAS, THE RIVER ADVISORY COMMITTEE MET ON JANUARY 20, 2022 TO DISCUSS AND CONSIDER THE RECOMMENDED CHANGES TO THE DEFINITION OF A HOLIDAY.

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 86-99 through 86-121 of the New Braunfels Code of Ordinances shall be amended to hereinafter read as follows, with changes indicated by the use of strikeout font for deleted language and underlined font for new language:

ARTICLE V. RIVER MANAGEMENT FEE WRISTBANDS¹

Sec. 86-99. Definitions.

Holiday shall have the meaning as described in Section 86-116.

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

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

(Ord. No. 2018-1, § 2, 1-8-18)

¹Editor's note(s)—Ord. No. 2018-1, § 2, adopted January 8, 2018, amended article V in its entirety to read as herein set out. Formerly, article V pertained to similar subject matter, and derived from Ord. No. 01-22, §§ I—VIII, adopted March 26, 2001; Ord. No. 2014-22, § 2, adopted March 10, 2014; Ord. No. 2014-30, § 2, adopted April 28, 2014, and Ord. No. 2016-02, § 2, adopted January 25, 2016.

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

It shall be the duty and responsibility of any river outfitter in the city to mark that equipment to prominently display the name and/or logo of the river outfitter 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.

(Ord. No. 2018-1, § 2, 1-8-18)

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 river outfitter renting water oriented recreational equipment to make certain their customers pay the required river management fee and are issued and wearing a city-issued wristband when entering the City Tube Chute, Prince Solms Park, Hinman Island Park or using public exits on the Comal and Guadalupe Rivers. If a river outfitter 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 will not have to pay for the river management fee but will still receive a city-issued wristband. The river outfitter is responsible for recording required information from the resident pass and submitting it to city staff through the proper channels if the river outfitter wishes to record the resident on their monthly report.
- (3) River 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. 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. The river outfitter is responsible for recording the use of complimentary wristbands in a form provided by City staff.
- (4) 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 New Braunfels resident or charged a river management fee if appropriate.

(Ord. No. 2018-1, § 2, 1-8-18)

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, on holidays and weekends beginning Memorial Day weekend and concluding Labor Day of each year, shall be wearing a city-issued wristband.

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- (1) It shall be the duty and responsibility of river outfitters to make sure that all passengers are wearing city-issued wristbands. If a river outfitter 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) River 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 shuttle vehicles may be stopped and audited at any time to ensure compliance with this provision.

(Ord. No. 2018-1, § 2, 1-8-18)

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. Wristbands will be issued to river outfitters 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.

(Ord. No. 2018-1, § 2, 1-8-18)

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

The City shall be the sole distributor of the city-issued wristbands. Any river outfitter 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 river outfitter who receives distribution of consignment wristbands is strictly prohibited from transferring or selling any of their city-issued wristbands to any other river outfitter. Any such river outfitter 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, with the exception of September which will be due on the 15th of September. 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.

(Ord. No. 2018-1, § 2, 1-8-18)

Sec. 86-105. Civil penalty.

- (a) Any person or river outfitter 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 or river outfitter 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 City Manager or designee. 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.

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- (b) If any person or river outfitter disputes any alleged violation under subsection (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 Manager or designee. 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.

(Ord. No. 2018-1, § 2, 1-8-18)

Sec. 86-106. Criminal penalty.

- (a) No culpable mental state required. The culpable mental state required by V.T.C.A., Penal Code ch. 6.02 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 or river outfitter 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.

(Ord. No. 2018-1, § 2, 1-8-18)

Secs. 86-107—86-115. Reserved.

ARTICLE VI. RIVER MANAGEMENT FEE²

Sec. 86-116. Definitions.

Holiday means Memorial Day, Independence Day, Independence Day Observed, and Labor Day. 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.

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

²Editor's note(s)—Ord. No. 2018-1, § 2, adopted January 8, 2018, amended article VI in its entirety to read as herein set out. Formerly, article VI pertained to similar subject matter, and derived from Ord. No. 01-32, §§ I—V, adopted May 14, 2001; Ord. No. 2008-29, §§ II—VI, adopted April 14, 2008; Ord. No. 2014-23, § 2, adopted March 24, 2014, and Ord. No. 2016-02, § 2, adopted January 25, 2016.

Public river exit means Cypress Bend Park, Lincoln Street River Exit (Last Public 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 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 shall have the meaning as described by 86-99).

Shuttle operator means any river outfitter 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, stand up paddle boards, canoes and all other forms of personal watercraft.

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

(Ord. No. 2018-1, § 2, 1-8-18)

Sec. 86-117. Public river exits.

A river 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 entrance or exit, unless said river 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.

(Ord. No. 2018-1, § 2, 1-8-18)

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.

(Ord. No. 2018-1, § 2, 1-8-18)

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 river outfitter subject to this article shall prepare a 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 river outfitter subject to this article shall maintain a log of resident passes created by City staff for which wristbands were issued and submitted to the City. . The appropriate fee must be delivered to the City Manager or designee 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.

(Ord. No. 2018-1, § 2, 1-8-18)

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

- (a) *Suspension.* Any river outfitter ("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 Manager or designee 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.

(Ord. No. 2018-1, § 2, 1-8-18)

Sec. 86-121. Criminal penalty.

- (a) No culpable mental state required. The culpable mental state required by V.T.C.A., Penal Code ch. 6.02 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 or river outfitter 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.

(Ord. No. 2018-1, § 2, 1-8-18)

SECTION 3: All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only. All provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 4: 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, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 5: This Ordinance shall become adopted and effective upon its final reading, signature and publication 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 _____, 2022.

PASSED AND APPROVED: Second reading this ____ day of _____, 2022.

CITY OF NEW BRAUNFELS, TEXAS

RUSTY BROCKMAN

ATTEST:

Gayle Wilkinson, Interim City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney