

ORDINANCE NO. 2018-

AMENDING THE CITY OF NEW BRAUNFELS, TEXAS, CODE OF ORDINANCES CHAPTER 82- OFFENSES AND MISCELLANEOUS PROVISIONS, CREATING SECTIONS 82-24 TO 82-28, THAT WILL CONTIAN NEW PROVISIONS RELATED TO PROHIBITING THE FEEDING OF WILDLIFE; PROVIDING DEFINITIONS AND PENALTIES; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of New Braunfels finds that feeding of wildlife has resulted in overabundant and highly concentrated populations of wildlife throughout the City and within City parks; and

WHEREAS, the feeding of deer has been shown to increase the concentration of deer in urbanized areas, thereby increasing the likelihood of collisions between vehicles and deer, and increasing damage to residential and commercial vegetation and landscaping in the City; and

WHEREAS, the City finds that overabundant deer and avian wildlife populations have contributed to an increase of bacteria pollution in the Comal River and Dry Comal Creek; and

WHEREAS, the feeding of wildlife can cause concentrated areas of biological waste, containing bacteria, nitrogen and phosphorus, which can lead to water quality degradation, thereby impacting popular contact recreation waterways; and

WHEREAS, the City and the Texas Parks and Wildlife Department find that discouraging and prohibiting the artificial feeding of wildlife is in the best interest of the health, safety and welfare of the community and wildlife populations.

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

Section 1

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

Section 2

That Chapter 82, “Offenses and Miscellaneous Provisions”, as it currently exists is amended by creating sections 82-24 to 82-28, related to prohibiting the feeding of wildlife, to read as follows:

Sec. 82-24. Definitions.

- (a) “Food” means bread products, corn, fruit, oats, hay, nuts, wheat, alfalfa, salt blocks, feed, grain, vegetables, and commercially sold wildlife feed, or livestock feed, but excludes live naturally growing shrubs, live crops, plants, flowers, vegetation, gardens, trees, and fruit or nuts that have fallen on the ground or are within reach of wildlife.
- (b) “Wildlife” means undomesticated animals living in the wild.

Sec. 82-25. Feeding of wildlife prohibited.

- (A) Except as provided below in 82-26, (A) and (B), a person commits an offense if the person intentionally feeds wildlife by making food available for consumption on private or public property within the territorial limits of the city.
- (B) A person shall be deemed to have purposely fed or caused wildlife to be fed if the person places food, as defined in this section, in any form, (not including live vegetation such as ornamental landscaping or flowers) on the ground, or within reach of wildlife.
- (C) A person who violates any provision of this ordinance commits an offense.

Sec. 82-26. Exceptions; Affirmative Defenses

- (A) This ordinance does not apply to the placement of food into feeders kept at a minimum of 5 feet above the ground surface and intended for birds.
- (B) This ordinance does not apply to an animal control officer, veterinarian, peace officer, City employee, federal or state wildlife official, who is acting pursuant to a lawfully authorized program to treat, manage, capture, trap, hunt, or remove wildlife and who is acting within the scope of the person’s authority.
- (C) It is an affirmative defense to prosecution under this section if a person places food, in good faith, for the purpose of feeding domestic livestock or domestic pets located on their property.

Sec. 82-27. Enforcement.

- (A) Animal Control Officers, Park Rangers and Police Officers are hereby given full power and authority to enforce this ordinance.
- (B) It is a violation to hinder, molest or interfere with anyone authorized or empowered to perform any duty under this ordinance.

Sec. 82-28. Penalties.

- (A) A person who commits a violation of this ordinance will first be given a warning and will be provided information on the negative impacts of wildlife feeding. A second offense will result in prosecution in municipal court. Any violation of this ordinance is deemed a Class C misdemeanor punishable by a fine of not less than \$75.00 or more than \$500.00. Each day any violation of any provision of this Code shall continue shall constitute a separate offense.
- (B) 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 ordinance shall be strict liability offenses.
- (C) Nothing in this section shall be construed as to limit any civil action the city may take to enforce the terms of this ordinance.

Section 3

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 4

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 5

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

Section 6

In accordance with the provisions 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 7

This Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, filing with the City Secretary's Office and then following a six-month grace period that allows for community education and outreach. This Ordinance must also 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 this _____ day of _____, 2018.

PASSED AND APPROVED: Second reading this _____ day of _____, 2018.

CITY OF NEW BRAUNFELS, TEXAS

By: _____
Barron Casteel, Mayor

ATTEST:

Patrick D. Aten, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney