

ORDINANCE NO. 2016-02

**AN ORDINANCE AMENDING CHAPTER 86 OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS, ARTICLE V SECTION 86-119 BY INCREASING THE RIVER MANAGEMENT FEE FROM \$1.50 TO \$2.00; CHARGING FEE TO PRIVATE TUBERS THAT USE CERTAIN CITY OWNED PUBLIC PARK PROPERTY AND PUBLIC RIVER EXITS; COLLECTING FEE ONLY HOLIDAYS AND WEEKENDS FROM MEMORIAL WEEKEND TO LABOR DAY; EXEMPTING RESIDENTS THAT PRESENT A VALID RESIDENT PASS; AND AMENDING CHAPTER 138 ARTICLE VI, SECTION 138-170(i), INCREASING THE RIVER MANAGEMENT FEE FROM \$1.50 TO \$2.00; 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 exists water recreation facilities creates 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 2001 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 River Advisory Committee recommends and the City Council finds that it is necessary to extend the river management fee to non-resident private tubers that utilize certain City owned public park property and public river exits;

**WHEREAS**, the City Council believes that the current fee of \$1.50 is insufficient to help offset associated costs; and

**WHEREAS**, the City Council intends that funds raised from said river management fee increase shall not materially exceed the cost of regulation associated with said rivers; and

**WHEREAS**, the City Council believes that the increase of the river management fee will continue to help protect the health and safety of all persons using the Comal and Guadalupe rivers within the corporate territorial limits of the City of New Braunfels, Texas;

**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 Article V and VI of Chapter 86, and Article VI of Chapter 138 of the Code of Ordinances, City of New Braunfels as it currently exists is amended to read as follows:

**ARTICLE V. RIVER ACTIVITY WRISTBANDS**

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

Between Memorial Day and 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. 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.

## **ARTICLE VI. RIVER MANAGEMENT FEE**

### **Sec. 86-116. - Definitions.**

**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.

**Resident** means any person residing within the corporate city limits of the city of New Braunfels, Texas.

**Resident pass** means a pass issued by the City of New Braunfels to a resident of the city of New Braunfels, Texas. A resident pass is valid for one calendar year.

**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.

### **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 from Memorial Day through 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 from Memorial Day through Labor Day.

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

Fees shall be remitted to the City and a report filed for each month between Memorial Day and 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 on a daily basis before the close of business each day by a representative of the Director of the Parks and Recreation Department. 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) Any person, firm, partnership or corporation ('Violator') failing to remit fees, timely submit the monthly report, or violates any other provision of this ordinance 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 proposed 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 (10) 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. – Penalty.**

A person convicted of an offense under any portion of this ordinance 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 ordinance will count towards a second and third charge regardless of when it occurred.

That Article VI of Chapter 138 of the Code of Ordinances, City of New Braunfels as it currently exists is amended to read as follows:

(i) Any City water recreation shuttle permit holder shall collect from each passenger and remit to the City a river management fee in the amount of \$2.00 for each person transported from locations on the Comal River and Guadalupe River down river from the Gruene Road bridge within the corporate territorial limits of the City of New Braunfels, Texas, unless said passenger has already paid a river management fee for the rental of water-oriented recreational equipment, as described by Chapter 86, Article V of the City Code of City of New Braunfels, Texas. A river management fee is valid only for the date that it is collected.

**SECTION 3: Savings Clause.**

All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

**SECTION 4: Severability.**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void.

**SECTION 5: Effective Date and Publication.**

This Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing by the City Secretary. 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 of this the 11<sup>th</sup> day of January, 2016.

PASSED AND APPROVED: Second Reading of this the 25<sup>th</sup> day of January, 2016.

**CITY OF NEW BRAUNFELS, TEXAS**

By: \_\_\_\_\_

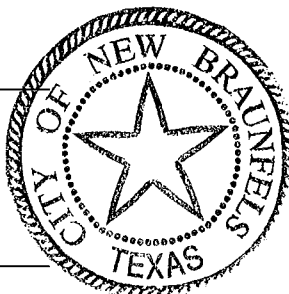
**Barron Casteel, Mayor**

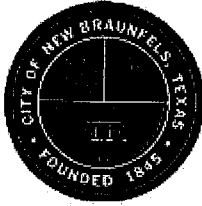
**ATTEST:**

\_\_\_\_\_  
**Patrick Aten, City Secretary**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Valeria M. Acevedo, City Attorney**





## **CERTIFICATE OF PUBLICATION**

I hereby certify that in the performance of the functions of my office, that the caption of Ordinance No. 2016-02 the ordinance of which is attached hereto, was published in The New Braunfels Herald-Zeitung on January 29, 2016, in compliance with Section 3.10 of the City Charter.

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Patrick Aten  
City Secretary,  
City of New Braunfels,  
Comal County, State of Texas

# Affidavit of Publication

STATE OF TEXAS }  
COUNTY OF COMAL }      SS

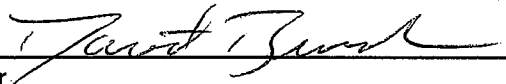
David Burck, being duly sworn, says:

That he is Publisher of the New Braunfels Herald-Zeitung, a daily newspaper of general circulation, printed and published in New Braunfels, Comal County, Texas; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

January 29, 2016

**PUBLIC NOTICE**  
At its regular meeting of January 25, 2016, the City Council of the City of New Braunfels, Texas, approved the following amendments to the Code of Ordinances: **ORDINANCE # 2016-02: AN ORDINANCE AMENDING CHAPTER 86 OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS, ARTICLE V SECTION 86-119 BY INCREASING THE RIVER MANAGEMENT FEE FROM \$1.50 TO \$2.00; CHARGING FEE TO PRIVATE TUBERS THAT USE CERTAIN CITY OWNED PUBLIC PARK PROPERTY AND PUBLIC RIVER EXITS; COLLECTING FEE ONLY HOLIDAYS AND WEEKENDS FROM MEMORIAL WEEKEND TO LABOR DAY; EXEMPTING RESIDENTS THAT PRESENT A VALID RESIDENT PASS; AND AMENDING CHAPTER 138 ARTICLE VI, SECTION 138-170(i), INCREASING THE RIVER MANAGEMENT FEE FROM \$1.50 TO \$2.00; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**  
**ORDINANCE # 2016-03: AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES BY REPEALING CHAPTER 18 BUSINESS, ARTICLE V – ALARM SYSTEMS; ADOPTING A NEW CHAPTER 18 BUSINESS, ARTICLE V – ALARM SYSTEMS; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.** Done by order of the City Council of the City of New Braunfels, Texas, this the 25th day of January, 2016.  
**PATRICK ATEN, CITY SECRETARY.**

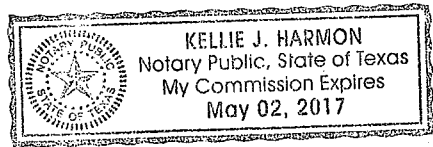
That said newspaper was regularly issued and circulated on those dates.

SIGNED:  
  
\_\_\_\_\_  
Publisher

Subscribed to and sworn to me this 29th day of January 2016.

  
\_\_\_\_\_  
Kellie J. Harmon, Receptionist, Comal County, Texas

My commission expires: May 02, 2017



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Liz Ladshaw  
City of New Braunfels - PBS  
424 S. Castell Ave.  
New Braunfels, TX 78130



**PUBLIC NOTICE**

At its regular meeting of January 25, 2016, the City Council of the City of New Braunfels, Texas, approved the following amendments to the Code of Ordinances: ORDINANCE # 2016-02: AN ORDINANCE AMENDING CHAPTER 86 OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS, ARTICLE V, SECTION 86-119 BY INCREASING THE RIVER MANAGEMENT FEE FROM \$1.50 TO \$2.00; CHARGING FEE TO PRIVATE TUBERS THAT USE CERTAIN CITY OWNED PUBLIC PARK PROPERTY AND PUBLIC RIVER EXITS, COLLECTING FEE ONLY HOLIDAYS AND WEEKENDS FROM MEMORIAL WEEKEND TO LABOR DAY, EXEMPTING RESIDENTS THAT PRESENT A VALID RESIDENT PASS; AND AMENDING CHAPTER 138 ARTICLE VI, SECTION 138-170(I), INCREASING THE RIVER MANAGEMENT FEE FROM \$1.50 TO \$2.00; REPEALING ALL ORDINANCES IN CONFLICT CONTAINING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE. ORDINANCE # 2016-03: AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES BY REPEALING CHAPTER 18 BUSINESS, ARTICLE V - ALARM SYSTEMS, ADOPTING A NEW

CHAPTER 18 BUSINESS, ARTICLE V - ALARM SYSTEMS, REPEALING ALL ORDINANCES IN CONFLICT CONTAINING A SAVINGS CLAUSE AND DECLARING AN EFFECTIVE DATE. Done by order of the City Council of the City of New Braunfels, Texas, this the 25th day of January, 2016.  
PATRICK ATEN  
CITY SECRETARY