

ORDINANCE NO. 1047-2014

AN ORDINANCE AMENDING CHAPTER 5 "FIRE PREVENTION AND PROTECTION", SECTION 5.05.001 "RESTRICTIONS ON BURNING" OF ARTICLE 5.05 "OUTDOOR FIRES" AND CHAPTER 13 "UTILITIES", SECTION 13.08.007 "TRASH BURNING" OF ARTICLE 13.08 "SOLID WASTE" OF THE RIVER OAKS CODE OF ORDINANCES (2006) AS AMENDED; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of River Oaks is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the River Oaks Code of Ordinances currently refers to The Texas Administrative Code Title 30, 1, 111, subchapter B, which restricts all fires and burning within the corporate city limits; and

WHEREAS, according to the Texas Administrative Code unless the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments, outside burning in the city limits is strictly prohibited; and

WHEREAS, under those provisions it necessitates that the city clarify what is and is not allowed as far as outdoor grilling and heat sources, as well as acceptable fuels with the city limits of River Oaks; and

WHEREAS, the City's Code Enforcement Officer recommends that the city incorporate provisions in their code of ordinance that permits outdoor grilling/BBQs and acceptable heat sources i.e. Chiminea / Fire pits with spark arrestors while still restricting open burning; and

WHEREAS, the City's Code Enforcement Officer further recommends that the City Council revise the provisions in Section 13.08.007 making it unlawful to burn any combustibles including refuse, garbage, trash, rubbish, uncut grass, weeds, timber, leaves, or other natural or synthetic materials; and

WHEREAS, the City Council concurs with the recommendation of the City's Code Enforcement Officer and has concluded after due and careful consideration to amend the River Oaks Code of Ordinances accordingly as herein provided for in this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVER OAKS:

SECTION 1.

With the adoption of this ordinance, Chapter 5 "Fire Prevention and Protection", is hereby amended by revising Article 5.05 "Outdoor Fires", specifically in Section 5.05.001 "Restrictions of Burning" of the River Oaks Code of Ordinances (2006) as adopted and as amended repealing the former provisions of Section 5.05.001 to now read as follows:

“Section 5.05.001 – Restrictions on burning

Any and all outdoor burning done in the city shall be done in compliance with the regulations of the state commission on environmental quality (TCEQ) as set forth in Texas Administrative Code, title 30, part 1, chapter 111, subchapter B. (Ordinance adopting Code) except that the following exceptions are permitted within the City Limits of River Oaks:

(a) Exceptions:

- (1) Burning in a portable device for purposes of cooking or heating, may be conducted in a device designated for such purpose by the manufacturer, with approved spark arresting screens or grates in place and shall not be operated within (10) ten feet of a structure or combustible material. Fuel shall be limited to propane, natural gas, seasoned wood and charcoal.
- (2) Permanent outdoor fireplaces, grills or fire pits constructed of noncombustible materials shall be located a minimum of (10) ten feet from a structure or combustible materials and shall comply with the Building Code via an approved Building Permit.”

SECTION 2.

With the adoption of this ordinance, Chapter 13 “Utilities”, is hereby amended by revising Article 13.08 “Solid Waste”, specifically in Section 13.08.007 “Trash Burning” of the River Oaks Code of Ordinances (2006) as adopted and as amended, repealing the former provisions of Section 13.08.007 to now read as follows:

“Section 13.08.007 – Trash Burning

It shall be unlawful for any person, firm or corporation to burn any combustibles including but not limited to refuse, garbage, trash, rubbish, uncut grass, weeds, timber, leaves, or other natural or synthetic materials, within the limits of the city.”

SECTION 3.

Cumulative Clause

This Ordinance shall be Cumulative of all provisions of Ordinances and of the River Oaks Code of Ordinance, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances or Code, in which case the conflicting provisions of such Ordinances or Code are hereby repealed.

SECTION 4.

Severability Clause

It is hereby declared to be the intentions of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been

enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section..

**SECTION 5.
Savings**

All rights and remedies of the City of River Oaks are expressly saved as to any and all violations of the provisions of the City of River Oaks Code of Ordinances (2006) or any other ordinances affecting outdoor fires and trash burning which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6.
Penalty**

In accordance to Section 1.01.009, "General penalty for violations of code; continuing violations", of the City of River Oaks Code of Ordinances (2006) as adopted and as amended; whenever in this code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this code or any such ordinance shall be punished by a fine of not exceeding five hundred dollars (\$500.00). Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense.

**SECTION 7.
Publication**

The City Secretary of the City of River Oaks is hereby directed to publish in the official newspaper the caption, savings clause, penalty clause, publication clause and effective date clause of this ordinance one (1) time after the adoption of this ordinance as authorized by Chapter 5, Section 5.02(c) of the Charter of the City of River Oaks.

**SECTION 8.
Effective Date**

This Ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED THIS THE 28th DAY OF OCTOBER 2014.



Mayor Herman Earwood

ATTEST:



Marvin C. Gregory III
City Secretary