

**ORDINANCE NO. 1232-2019**

**AN ORDINANCE ADOPTED PURSUANT TO SECTION 370.002 OF THE TEXAS LOCAL GOVERNMENT CODE READOPTING THE CITY'S JUVENILE CURFEW ORDINANCE THAT EXPIRED ON APRIL 26, 2019 FOLLOWING A LEGAL PUBLIC HEARING FOR PUBLIC INPUT; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE, PROVIDING A PENALTY FOR VIOLATIONS; 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**, Section 370.002 of the Texas Local Government Code provides that a municipality must hold a public hearing every 3 years for public input on the Juvenile Curfew Ordinance to consider whether to abolish, modify or continue with the ordinance; and

**WHEREAS**, Section 370.002 of the Texas Local Government Code provides that Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire and will have to be readopted; and

**WHEREAS**, a public hearing legally posted in accordance to law was held on May 28, 2019 at 7:00 P.M. in the City Chambers located at 4900 River Oaks Blvd, River Oaks, Texas considering all public comments as to whether the Juvenile Curfew Ordinance needed to be modified, abolished or revised and following the public hearing, the City Council adopted Ordinance 1232-2019 readopting the Juvenile Curfew Ordinance as herein provided; and

**WHEREAS**, following the close of that public hearing the River Oaks City Council after careful consideration deemed it necessary for the health, safety and general welfare of the citizenry and of the minors of the City of River Oaks to readopt the juvenile curfew ordinance as provided for herein this Ordinance in Article 8.02 Division 2 of the River Oaks Code of Ordinances (2006) as adopted and as amended.

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

**SECTION 1.**

With the adoption of this Ordinance, Article 8.02 "Minors", Division 2 "Curfew" be adopted pursuant to Section 370.002 of the Texas Local Government Code and as is herein provided:

**"Division 2. Curfew**

**Sec. 8.02.031 Definitions**

In this division:

**Curfew hours.**

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day;
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and
- (3) 8:30 a.m. until 3:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday.

**Emergency.** An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes but is not limited to a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

**Establishment.** Any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

**Guardian.**

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court.

**Minor.** Any person under 17 years of age.

**Officer.** A police officer of the city.

**Operator.** Any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

**Parent.** A person who is:

- (1) A natural parent, adoptive parent, or stepparent of another person; or
- (2) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

**Public place.** Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

**Remain. To:**

- (1) Linger or stay; or
- (2) Fail to leave premises when requested to do so by an officer or the owner, operator, or other person in control of the premises.

**Serious bodily injury.** Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**Sec. 8.02.032 Offenses**

(a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.

(b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.

(c) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

**Sec. 8.02.033 Defenses**

(a) It is a defense to prosecution under section 8.02.032 that the minor was:

(1) Accompanied by the minor's parent or guardian;

(2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;

(3) In a motor vehicle involved in interstate travel;

(4) Engaged in an employment activity, or going to or returning from home from an employment activity, without any detour or stop;

(5) Involved in an emergency;

(6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;

(7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;

(8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or

(9) Married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code.

(b) It is a defense to prosecution under section 8.02.032(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(c) It is a defense to prosecution under subsection (3) of the definition of "curfew hours" in section 8.02.031 that:

(1) The offense occurred at a time when the school in which the minor was enrolled was not in session;

(2) The minor has graduated from high school or received a high school equivalency certificate; or

(3) The minor has permission to be absent from school or to be in a public place from an authorized school official. In the case of a child being educated in a home school, a parent shall be deemed a school official for purposes of this subsection.

**Sec. 8.02.034 Enforcement**

Before taking any enforcement action under this division, an officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this division unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 8.02.033 is present.

**Sec. 8.02.035 Penalties**

(a) A person who violates a provision of this division is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine as provided in section 1.01.009.

(b) When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 8.02.032(b) of this division and shall refer the minor to juvenile court."

**SECTION 2.  
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 3.  
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 4.  
SAVINGS CLAUSE**

All rights and remedies of the City of River Oaks, Texas, are expressly saved as to any and all violations of the provisions of the Code of Ordinances of the City of River Oaks, Texas or any other ordinances affecting minors and/or juvenile curfew 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 5.  
PENALTY CLAUSE**

Unless a differing penalty is expressly provided for within the Code, every person convicted of a general violation of any provision of the Code or any rule, ordinance, or police regulation of the City shall be punished by a fine not to exceed \$2,000.00 for violations of all such rules, ordinances and police regulations that govern fire safety, zoning, or public health and sanitation, including dumping of refuse, and not exceeding \$500.00 for all other violations. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. A person who violates a provision of this division is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine as provided in section 1.01.009. When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 8.02.032(b) of this division and shall refer the minor to juvenile court.

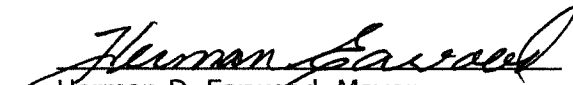
**SECTION 6.  
PUBLICATION CLAUSE**

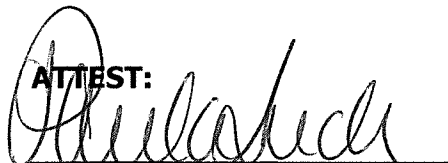
The City Secretary is directed to publish in the official newspaper of the City, the caption, penalty clause, savings clause, publication clause and effective date clause of this ordinance one time as authorized by Chapter 5, Section 5.02(c) of the Charter of the City of River Oaks.

**SECTION 7.  
EFFECTIVE DATE**

This Ordinance shall be in full force and effect after its passage by a majority vote of the City Council of the City of River Oaks and the legal publication of this ordinance if any is required and it is so ordained.

**APPROVED THIS THE 28<sup>TH</sup> DAY OF MAY 2019.**

  
Herman D. Earwood, Mayor  
City of River Oaks

**ATTEST:**  
  
Paula Luck  
City Secretary  
City of River Oaks