

## **ORDINANCE # 1242-2019**

AN ORDINANCE AMENDING ARTICLE 4.05 "YARD SALES" SPECIFICALLY UNDER SECTION 4.05.002 "DEFINITIONS" PROVIDING A DEFINITION FOR ESTATE SALE AND IN SECTION 4.05.006 "REQUIREMENTS AND CONDITIONS" OF THE RIVER OAKS CODE OF ORDINANCES REVISING THE REQUIREMENTS FOR HOLDING YARD SALES WITHIN THE CITY SPECIFICALLY REGARDING ESTATE SALES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; 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 requirements for times for holding a yard sale and estate sale necessitate being revised in order to correspond to the intentions for the purpose of estate sales being enforced equally throughout the city; and

**WHEREAS**, the City Council has determined after due and careful consideration that Section 4.05.006 "Requirements and Conditions" based on Staff's recommendation has to be revised in order to bring the policies for yard sales and estate sales into being compatible to each other.

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

### **SECTION 1.**

That Article 4.05, "Yard Sales" of the City of River Oaks Code of Ordinances (2006) with the adoption of this ordinance, Section 4.05.002 "Definitions" is amended by incorporating the definition of "Estate Sales" by revising Section 4.05.002 to now read as follows:

"For the purpose of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**Estate sale.** An **estate sale** is a sale or auction to dispose of a substantial portion of the materials owned by a person who is recently deceased or who must dispose of their personal property to facilitate a move. An estate sale is limited to only once within a calendar year without special permitting from the City Council.

**Nonprofit yard sale.** Occasional or general sales open to the public conducted from or on any property located in any commercial zone, as defined by the zoning ordinance, for the purpose of disposing of donated personal property for sale, including but not limited to, all sales entitled garage, lawn, yard, patio, rummage or estate sale at which items are sold to benefit a nonprofit cause. A nonprofit yard sale does not include a sale of ten or less specific items if all advertisements of such sale specifically name each of those items to be sold.

**Personal property.** That which is owned, used and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence but does not include merchandise which was purchased or acquired for resale or obtained on consignment.

**Residential yard sale.** Occasional or general sales, open to the public, conducted from or on any property located in any residential zone, as defined by the zoning ordinance, for the purpose of disposing of personal property, including but not limited to, all sales entitled garage, lawn, yard, patio, occasional, rummage or estate sale, but a residential yard sale does not include a sale of ten or less specific items if all advertisements of such sale specifically name each of those items to be sold.”

## **SECTION 2.**

That Article 4.05, “Yard Sales” of the City of River Oaks Code of Ordinances (2006) with the adoption of this ordinance, Section 4.05.006 “Requirements and Conditions” is amended by revising Section 4.05.006 to now read as follows:

### **“SEC. 4.05.006 “Requirements and Conditions”**

- “a) A charitable, religious, educational, fraternal or governmental organization may not hold a yard sale on residential property.
- (b) A yard sale permit may not be issued, at the same residence or dwelling more than two (2) times per calendar year at least four (4) months apart except that this provision would not apply to estate sales which would allow both sales to be held without an estate sale counting against the time limit for yard sales when being held from the same property. If members of more than one residence in an area request a permit, a permit is required for each residence.
- (c) A Yard Sale Permit shall only be issued to an active utility account holder within the City of River Oaks. A Yard Sale Permit shall not be issued for vacant lots where no principal structure is located unless otherwise approved by the Mayor or his designee. An Estate Sale may be permitted when applied for by the Executor or other person proven to be the responsible party for that property. A permit for an Estate Sale may not be issued, at the same residence or dwelling more than once in a calendar year without the issuance of a Special Permit from the City Council.
- (d) A person conducting a yard sale shall place the sign displaying the yard sale permit, issued by the city, in the dwelling at which the sale is to be conducted, so that it is clearly visible from the street.
- (e) The duration of any yard sale shall not exceed three consecutive calendar days and may be held only on Thursday, Friday, Saturday, and/or Sunday.
- (f) If inclement weather occurs on any part of two days of a scheduled and permitted yard sale, resulting in cancellation, the sale shall not be charged against the frequency of sales permitted. The applicant shall notify the city secretary on the next regular working day of the cancellation due to weather. Permit fees are not refunded for weather cancellations.
- (g) All personal property offered for sale may be displayed in the yard, in the residence, in the garage, in the carport, or on the driveway. Property shall not be displayed or sold within 15 feet of a public street or sidewalk.
- (h) Property sold at the yard sale must not be acquired nor consigned for the purpose of resale, and must not be from an inventory or stock of goods in trade.

(i) The permittee shall only use yard sale signs issued by the city. With each yard sale permit, the applicant will receive five directional signs and one permit sign. The permit sign must be placed on the property where the yard sale is located so that it is readily observed from the street. The directional signs may be placed on private property with permission of the property owner, to aid the public in finding the location of the sale. The permission of the property owner must be indicated by the property owner's signature on the back of the sign. *If an applicant wants more directional signs than the five issued with the permit, the applicant may obtain up to five additional signs upon payment of \$1.00 for each additional sign.*

(j) Signs may be displayed 24 hours before the sale begins and must be removed by one hour after sunset on the last day of the yard sale. A person shall not display a yard sale sign on a utility pole or in the public right-of-way.

(k) At the conclusion of a yard sale, the person conducting the sale shall remove all items displayed for sale and all display tables and other display items from the yard or other area visible from the street. This removal must be completed by 8:00 a.m. on the morning following the last day of the sale."

### **SECTION 3.**

#### **CUMULATIVE**

This Ordinance shall be cumulative of all provisions of Ordinances of the city, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

### **SECTION 4.**

#### **SEVERABILITY**

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 yard or garage sales 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**

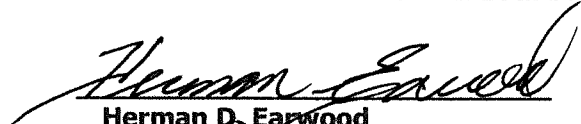
The City Secretary of the City of River Oaks is hereby directed to publish in the official newspaper the caption, savings clause, penalty clause, publication clause and effective date clause of this ordinance one (1) time after the adoption of this ordinance as authorized by Chapter 5, Section 5.02(c) 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 10th DAY OF SEPTEMBER, 2019.**

  
**Herman D. Earwood**  
**Mayor**

**ATTEST:**

  
**City Secretary**