

CITY OF RIVER OAKS ORDINANCE NO. 1329-2021

AN ORDINANCE OF THE CITY OF RIVER OAKS, TEXAS, AMENDING CHAPTER 8 "OFFENSES AND NUISANCES" INCORPORATING ARTICLE 8.10 "RESTRICTION OF RESIDENCY OF SEXUAL OFFENDERS AGAINST CHILDREN" OF THE RIVER OAKS CODE OF ORDINANCES (2020) AS AMENDED MAKING IT UNLAWFUL FOR CERTAIN SEX OFFENDERS TO RESIDE WITHIN 1,500 FEET OF PREMISES WHERE CHILDREN GATHER; MAKING IT UNLAWFUL TO LEASE, RENT, OR PROVIDE LIVING SPACE TO CERTAIN SEX OFFENDERS WHEN SUCH WOULD RESULT IN VIOLATION OF THIS ORDINANCE; PROVIDING THAT A CULPABLE MENTAL STATE IS NOT REQUIRED FOR COMMITTING AN OFFENSE UNDER THESE PROVISIONS; PROVIDING FOR AFFIRMATIVE DEFENSES; PROVIDING FOR A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; 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 Mayor and City Council of the City are deeply concerned about the numerous and recent occurrences in our state and elsewhere, whereby convicted sex offenders who have been released from custody repeat the unlawful acts for which they had been originally convicted; and

WHEREAS, the City Council finds that the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes against children; and

WHEREAS, the City Council finds that establishing a policy to restrict the property available for residence of sex offenders will provide better protection for children gathering in the City; and

WHEREAS, the City Council of the City of River Oaks finds and declares that the presence of sex offenders in areas where children tend to gather constitutes a serious threat to public safety; and

WHEREAS, Article 42.12 (13B) of the Texas Code of Criminal Procedure provides a one thousand (1,000) foot safety zone for children as a condition of probation for those convicted of certain sexual offenses; and

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace order and welfare of the municipality;

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

SECTION 1.

Chapter 8 "Offenses and Nuisances" of the River Oaks Code of Ordinances (2020) is hereby amended by the addition of a new Article, Article 8.10 "**Restriction of Residency of Sexual Offenders against Children**", which shall now read as follows:

"ARTICLE 8.10. RESTRICTIONS ON RESIDENCY OF SEXUAL OFFENDERS AGAINST CHILDREN

Section 8.10.001. Finding, intent and definitions.

- (a) *Findings and Intent.* That repeat sexual offenders, sexual offenders that use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses and most sexual offenders commit many offences, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant. It is the intent of this ordinance to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain sexual offenders and sexual predators are prohibited from establishing temporary or permanent residences.
- (b) *Definitions.* For the purposes of this Article, the following terms, words, and derivations thereof shall have the meanings given herein.
- (1) *Minor.* A minor is a person younger than eighteen (18) years of age.
 - (2) *Permanent Residence.* A place where a person abides, lodges or resides for fourteen (14) or more days.
 - (3) *Premises where children commonly gather.* Public parks, private and public schools, amusement arcades, video arcades, indoor and outdoor amusement centers, amusement parks, public, commercial and semi-private swimming pools, and child day care centers, as such terms are defined in the Comprehensive Zoning Ordinance of the City of River Oaks. For purposes of this Ordinance, planted street medians are not public parks
 - (4) *Temporary Residence.* Either a place where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent residence, or a place where a person routinely abides, resides or lodges for a period of four (4) or more consecutive or non- consecutive days in any month and which is not the person's permanent residence.

Section 8.10.002 Restrictions on residency of convicted sexual offenders against children.

- (a) *Offenses.* It is unlawful for any person required to register on the Texas Department of Public Safety's Sex Offenders Database (the "Database") because of a violation involving a victim who was less than seventeen (17) years of age to establish a permanent residence or temporary residence within one thousand five hundred (1,500) feet of any premises where children commonly gather, as defined in this Article.
- (b) *Evidentiary matters; measurements.*
- (1) It shall be prima facie evidence that this Section applies to such a person if that person's record appears on the Database and the Database indicates that the victim was less than seventeen (17) years of age.
- (2) For the purposes of determining the minimum distance separation, the requirement shall be measured as follows:
- (A) for residences which are single-family residences as defined in the Comprehensive Zoning Ordinance of the City of River Oaks, by following a straight horizontal line from the outer property line of the lot on which the permanent or temporary residence is located to the nearest property line of the premises where children commonly gather, as defined in this Article; or
- (B) for residences which are multi-family residences as defined in the Comprehensive Zoning Ordinance of the City of River Oaks, by following a straight horizontal line from the closest door of the residence to the nearest property line of the premises where children commonly gather, as defined in this Article.
- (C) A map depicting the prohibited areas shall be maintained by the Chief of Police of the City of River Oaks. The City shall review the map at least annually for changes. Said map will be available to the public at the River Oaks Police Department.
- (c) *Culpable mental state not required.* Neither allegation nor evidence of a culpable mental state is required for proof of an offense under this Section.

Section 8.10.003. Restrictions on leasing, renting, or providing living quarters to convicted sexual offenders against children.

- (a) It is unlawful to lease, rent, or otherwise provide any residence, dwelling, place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this Article, if such place, structure or part thereof, manufactured home, trailer, or other conveyance, is located within one thousand five hundred (1,500) feet of any premises where children commonly gather, as defined in this Article.
- (b) The determination of the distance between the residence described in this Section and the premises where children commonly gather, as defined in this Article shall be measured as provided in this Article.

Section 8.10.004. Affirmative defenses.

It is an affirmative offense to prosecution under this Article that any of the following conditions apply:

- (a) The person required to register on the Database established the permanent or temporary residence prior to the date of the adoption of this ordinance and has complied with all of the sex offender registration laws of the State of Texas.
- (b) The person required to register on the Database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- (c) The person required to register to the Database is a minor.
- (d) The premises where children commonly gather, as specified herein, within

one thousand five hundred (1,500) feet of the permanent or temporary residence of the person required to register on the Database was opened after the person established the permanent or temporary residence and the person required to register on the Database has complied with all sex offender registration laws of the State of Texas.

- (e) The information in the Database is incorrect, and, if corrected, this Section would not apply to the person who was erroneously listed on the Database.

**SECTION 2.
PENALTY FOR VIOLATION**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined no more than Five Hundred Dollars and no cents (\$500.00) for each violation of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 3.
PROVISIONS SEVERABLE**

It is hereby declared to be the intention 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.
PROVISIONS CUMULATIVE**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Richland Hills, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 5.
RIGHTS AND REMEDIES SAVED**

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of the City Code amended or revised herein, or any other ordinances affecting the matters regulated herein 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.
PUBLICATION**

The City Secretary of the City of River Oaks is directed to publish the caption, penalty clause, savings clause, publication clause and effective date of this Ordinance to the extent required by law.

**SECTION 7.
PUBLICATION IN BOOK OR PAMPHLET FORM**

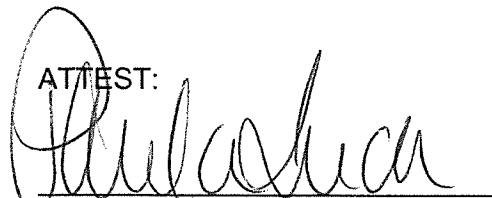
The City Secretary of the City of River Oaks is hereby authorized to publish this ordinance and the exhibits to this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance and the exhibits to this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

**SECTION 8.
EFFECTIVE DATE**

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

PASSED AND APPROVED ON THIS 9th DAY OF NOVEMBER 2021.


MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:



CITY ATTORNEY

EXHIBIT A
MAP DEPICTING
PROHIBITED AREAS



Legend
 1000 Feet Scale
 City Limit

