

**ORDINANCE # 1353-2022**

AN ORDINANCE AMENDING CHAPTER 4 "BUSINESS REGULATIONS OF THE RIVER OAKS CODE OF ORDINANCES (2020) AS ADOPTED AND AS AMENDED SPECIFICALLY IN ARTICLE 4.05 "YARD SALES" REVISING APPLICATION REQUIREMENTS, PERMIT FEE AND REQUIREMENTS AND CONDITIONS FOR HOLDING A YARD SALE; 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 fees for holding a yard sale does not cover all the costs with issuing a yard sale permit at five dollars (\$5) and is recommended to be increased to Ten Dollars (\$10) unless otherwise established by the City Council; and

**WHEREAS**, Staff is recommending that Article 4.05 "Yard Sales" be amended regarding application requirements including utility account status, applicant's age and valid government issued identification for proof of identification; and

**WHEREAS**, Staff is recommending that Article 4.05 "Yard Sales" also be amended regarding requirements and conditions for application submittal deadlines and by changing the number of sales permitted within a calendar year, cancellations, signage requirements and revocation and refusal of permit; and

**WHEREAS**, the City Council has determined after due and careful consideration that based on Staff's presentation that it is necessary to raise the fees in order to cover the incurred expenses and that the other revisions and changes would simplify the yard sales permitting process within the city for the residents and city staff alike.

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

**SECTION 1.**

That Article 4.05, "Yard Sales" in Chapter 4 "Business Regulations" of the River Oaks Code of Ordinances (2020) with the adoption of this ordinance, is hereby repealed being replaced as herein provided for to now read as follows:

**"ARTICLE 4.05 YARD SALES**

**Sec. 4.05.001 Sales on residential property**

No person residing in the city shall display for purposes of sale, offer to sell or sell, upon residential property, used personal property to a member of the general public, except in accordance with this article.

**Sec. 4.05.002 Definitions**

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.

#### **Sec. 4.05.003 Permit required**

A person shall not conduct a yard sale without obtaining a yard sale permit from the city prior to beginning the yard sale.

#### **4.05.004 Application requirements**

Prior to issuance of a yard sale permit, a person shall make a written application to the permit technician or his/her designee at least one business day in advance of the proposed sale. The application shall include the following information:

- (1) The complete name and address of each applicant;
- (2) The address/location at which the proposed sale is to be held;
- (3) The date or dates upon which the sale is to be held;
- (4) The date or dates of any other yard sales participated in or conducted by each applicant within the current calendar year; and
- (5) Must have an active utility account in good standing with the City and provide proof by a valid government issued picture identification card with the property address of the sale named on it and that applicant is at least 18 years of age or older; and
- (6) An affirmative statement that the property to be sold at the yard sale:
  - (A) Was neither acquired nor consigned for the purposes of resale;

(B) Is not from an inventory of stock of goods in trade; and

(C) If it is to be sold at a nonprofit yard sale, the personal property has been donated to be sold for a nonprofit cause.

(7) The name of the property owner and the address of the property on which directional signs will be placed.

**Sec. 4.05.005 Permit fee**

An applicant shall pay to the city permit department a fee of \$10.00 unless otherwise established by the City Council before the issuance of any yard sale permit.

**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 no more than four (4) times per calendar year and no more than two consecutive yard sales be held in successive weeks 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 a water utility account holder in good standing within the city. The property address of the sale must correspond to the valid government issued picture identification document of the utility account holder. A yard sale permit shall not be issued for vacant lots where no principal structure is located unless otherwise approved by the city manager or his or her 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) Yard Sale Applications must be made and approved no later than 24 hours before the day of the sale

(e) 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.

(f) 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.

(g) 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 permits department on the next regular working day of the cancellation due to weather. Permit fees are not refunded for weather cancellations.

(h) 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.

(i) 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.

(j) The permittee shall only use yard sale signs issued by the city. With each yard sale permit, the applicant will receive up to five (5) directional signs and one (1) permit sign for a total of no more than 6 signs including the 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 Applicant shall place the directional signs 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. Signs must be placed on a post or stake; no box stands and appropriate signage only.

(k) Signs may be displayed 24 hours before the sale begins and must be removed within 24-hours of the end of the yard sale. A person shall not display a yard sale sign on a utility pole, street signs or in the public right-of-way or in the highway median or along the highway.

(l) 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.

#### **Sec. 4.05.007 Revocation and refusal of permit**

A permit shall be issued if a proper application is submitted and the applicant has not already been issued four permits during the calendar year, except that:

(1) The city manager or his designee may revoke any permit or refuse any application for the issuance of a permit if the application submitted by the applicant or permit holder contains any false, fraudulent or misleading information.

(2) If any person is found to be in violation of an offense under this article, that person and any person residing in the same residence may not obtain a permit for a yard sale until the expiration of 12 consecutive months from the date of conviction.

#### **Sec. 4.05.008 Enforcement responsibility**

(a) The enforcement of this article shall be the responsibility of the code enforcement officer, ordinance officer, and/or police officers.

(b) Citation. Any code enforcement officer, ordinance officer or police officer shall have authority to issue citations for any violation of this article."

### **SECTION 2.**

### **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 3.**

#### **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 4.**

#### **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 5.**

#### **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 (2020) 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 6.**

#### **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.

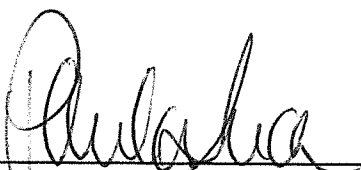
### **SECTION 7.**

#### **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 26th DAY OF JULY 2022.**

  
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**Joe Ashton**  
**Mayor**

**ATTEST:**   
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**City Secretary**