

A.
ORDINANCE NO. 1371-2023

AN ORDINANCE AMENDING ARTICLE 13.02 "UTILITY POLICY", DIVISION 2 "WATER SERVICE POLICY" SPECIFICALLY UNDER SECTION 13.02.038 "WAIVER OF CHARGES; ADJUSTMENTS TO BILL", OF THE RIVER OAKS CODE OF ORDINANCES BY REVISING SECTION 13.02.38(a) "RESPONSIBILITY FOR LEAKS"; REPEALING THE FORMER ORDINANCES IN CONFLICT THEREOF; 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, pursuant to Section 13.02.038(a) "Responsibility for Leaks" "of the Water Service Policy as amended if the leak is on the customer's side of the meter, it is the customer's responsibility to have it repaired and if the customer qualifies may request a leak adjustment providing they meet certain conditions; and

WHEREAS, city staff has recommended revisions that will add structure to the policy and still allow residents in need to get a leak adjustment; and

WHEREAS, the city council finds that there are unique situations in which the customer's leak could qualify for adjustment if it meets certain conditions; and

WHEREAS, the city council finds that the existing leak adjustment policy only applies to residential customers and is of the opinion it should also apply to commercial customers; and

WHEREAS, the City Council has concluded after due and careful consideration with the adoption of this ordinance to amend the River Oaks Code of Ordinances (2020) by amending Section 13.02.038(a) "Responsibility for Leaks" by revising the Leak Adjustment Policy as herein provided for.

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

SECTION 1.

With the adoption of this ordinance, Article 13.02 "Utility Policy", Division 2 "Water Service Policy", Section 13.02.038(a) "Responsibility for Leaks" of the River Oaks Code of Ordinances as adopted and as amended shall be revised to now read as follows:

"Section 13.02.038 – Waiver of Charges; Adjustments to Bill

(a) Responsibility for Leaks. Responsibility for leaks lies with the customer from the meter to the house. If the leak is on the street side of the meter, it will not register on the meter and will not affect the customer's bill. If the leak is on the customer's side of the meter, it is the customer's responsibility to have it repaired and no adjustment to the bill will be made except that a customer may apply for an adjustment of the water bill for an account because of a significant increase in water consumption that can be proven to the City Manager or his or her designee to be the result of a leak past the water meter in

the customer's water line serving the service address. *In order to qualify for an adjustment because of leaks, the following conditions otherwise known as the City's Leak Adjustment Policy must be met:*

- (1) the customer may apply for a leak adjustment on forms provided by the City of River Oaks Water Department; and
- (2) The account is an active account in good standing with a separate meter in which the customer has been at the same service address for at least one year; and
- (3) if it is a single-family residential account, the customer must be living at the address and the account must be in the requestors name or in the name of the authorized user: and
- (4) if it is a Commercial account, the account must be in the Business name and the authorized user may request the adjustment: and
- (5) leak must be repaired in a timely manner; if city staff notifies customer of leak at the property, then the repairs need to be completed in 60 days.
- (6) the account for the service address must have an increase in consumption; or, usage for the billing period or periods for which the adjustment is sought that exceeds the average of the (12) previous billing periods by 33 percent or more; and
- (7) the adjustment to water charges because of leaks shall be made only once in a 12-month period at the service address and shall not be for more than two consecutive billing periods where a 33-percent or more increase in consumption occurs; and
- (8) It is the customer's responsibility to contact the Permits Department to inquire into any permit requirements. Unpermitted repairs will disqualify account from a leak adjustment.
 - i. All leaks must be repaired fully prior to application;
 - ii. Any required plumbing permits must be obtained; and
 - iii. Repairs requiring permit must pass inspection; and
- (9) the customer presents a receipt showing payment for work repairing leaks by a professional plumber at the service address within 30 days from the time the adjustment is sought; or the customer presents a receipt showing purchase of plumbing supplies and materials that would be necessary for the repair of the leak within 30 days from the time the adjustment is sought and if requested, furnishes proof to the Public Works Director or designee of actual parts and or pipe removed from the system that exhibit damage sufficient to cause a significant water loss; and
- (10) if the account qualifies for an adjustment, then the adjustment will be made for the two (2) highest qualifying billing periods as follows:
 - (i) the average consumption for the twelve (12) months prior to the adjustment period shall be calculated and this average rounded to the nearest cubic feet shall be subtracted from the actual consumption for each billing period for which the adjustment is sought; and
 - (ii) the result shall be divided by two (2) for and the resulting figure (amount of cubic feet of water) will be reimbursed to their account one half the water loss of the 2 highest bills during the "leak period"; and

- (iii) penalties incurred on accounts while the adjustment request is pending, may be considered to be waived; and
- (iv) for single-family residential accounts only if the leak occurs in the sewer winter month averaging period (November, December, or January), the consumption for sewer calculations for those months shall be the adjusted amount in (6ii) above rounded to the nearest 100 cubic feet in accordance to the sewer rate chart. There shall be no adjustment for sewer outside of the winter month averaging period; and
- (v) There shall be no adjustments for the sewer on commercial accounts.
- (vi) with the winter averaging method of calculating the sewer, the City does not make water adjustments for filling swimming pools; and
- (vii) adjustments are not normally issued for sprinkler head leaks, toilet leaks, dripping faucets or other above ground leaks unless upon review by the City Manager or his/her designee, it is determined that an unusual situation has occurred. It is a defense to the customer if a police report has been filed for criminal mischief; and
- (viii) Prior history will be screened on an individual basis to ensure that this policy is not being abused by individuals who do not fix their leaks or make necessary repairs to mitigate leak prone piping and expect adjustments every 12 months.”
- (ix) The application form shall contain a statement setting forth an understanding that the application is a government record subject to criminal prosecution for false statements under chapter 37 of the Texas Penal Code, and the customer must state that the application contains no false statements

**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 are expressly saved as to any and all violations of the provisions of the City of River Oaks Code of Ordinances as adopted and as amended or any other ordinances affecting Utility Policy procedures 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**

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). However, a fine or penalty for the violation of a rule, ordinance or police regulation that governs fire safety, zoning or public health and sanitation other than dumping of refuse may not exceed two thousand dollars (\$2,000.00); a fine or penalty for the violation of a rule, ordinance, or police regulation that governs the dumping of refuse may not exceed four thousand dollars (\$4,000.00). Provided, however, that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense. In the event that any such violation is designated as a nuisance under the provisions of this code, such nuisance may be summarily abated by the city. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

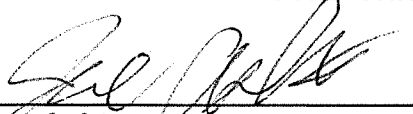
**SECTION 6.
Publication Clause**

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 14th DAY OF MARCH 2023.



Joe Ashton
Mayor
City of River Oaks

ATTEST: 

Paula Luck
City Secretary