

ORDINANCE # 1433-2024

AN ORDINANCE AMENDING ARTICLE 4.02 "PEDDLERS, SOLICITORS & ITINERANT VENDORS" OF THE RIVER OAKS CODE OF ORDINANCES (2020) AMENDING SECTION 4.02.006 TO PROVIDE REGULATIONS FOR DISTRIBUTION OF HANDBILLS AND ADDING SECTION 4.02.007 TO ESTABLISH PENALTIES FOR VIOLATION OF THE ARTICLE; 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, there has been numerous complaints about the delivery of unsolicited circulars and newspapers being thrown onto private property within the City; and

WHEREAS, the City Attorney opinion is the delivery of such unsolicited circulars and newspapers is not considered to be littering; and

WHEREAS, the City Council finds that controls must be put in place regarding the distribution of unsolicited advertising circulars and newspapers that in their opinion creates environmental and property blight; and

WHEREAS, the City Council further finds that these advertising circulars and newspapers when not picked up and properly discarded have the possibility of getting into the City's drainage system and possibly could create obstructions restricting the natural flow of storm water runoff; and

WHEREAS, it should not be the responsibility of the property owners and/or tenants to clean up and discard such printed materials that they have not specifically ordered, subscribed to or requested; and

WHEREAS, the City Council after careful consideration deemed it necessary for the health, safety and general welfare of the citizenry finding that the distribution of unsolicited advertising materials shall be regulated within the City of River Oaks with the adoption of this Ordinance

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

SECTION 1.

With the adoption of this Ordinance, Article 4.02 "Peddlers, Solicitors, Itinerant Vendors" shall be amended by repealing and replacing Section 4.02.006 in its entirety and adding a new Section 4.02.007 to read as follows:

"Section 4.02.006 Handbills.

(a) Throwing, distributing, etc., handbills in public places. No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the city; nor shall any person hand out or distribute or sell any commercial handbill in any public place. It shall not be unlawful on any sidewalk, street or other public place within the city for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill to any person willing to accept it.

(b) Placing handbills in or upon vehicles. No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle. It shall not be unlawful in any public place for a person to hand out or distribute, without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

(c) Depositing handbills on uninhabited or vacant premises. No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

(d) Distribution of handbills where posted or indicated as prohibited. No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on such premises in a conspicuous position near the entrance thereof, a sign bearing the words "No Trespassing," "No Peddlers or Agents," "No Advertisement," or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or have their right of privacy disturbed, or to have any such handbills left upon such premises.

(e) Manner of distribution of handbills to inhabited premises.

(1) *Unposted, private premises.* In case of inhabited private premises which are not posted, as provided in this article, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises if such handbill is in a plastic bag or so placed or deposited as to secure or prevent such handbill from being decomposed by the elements or blown or drifted about such premises or sidewalks, streets or other public places. Mailboxes may not be so used when so prohibited by federal postal law or regulations.

(2) *Requirements for commercial handbills distributed to inhabited premises.*

a. All commercial handbills will have printed on page one of the handbill the following statement: "IF YOU DO NOT WISH TO RECEIVE THIS PUBLICATION, PLEASE CALL" followed by an area code plus the telephone number that an owner or occupant of the premises may use to notify the person distributing such handbills that handbills are not to be delivered to the owner or occupant's premises. The font for this statement and telephone number must be no smaller than 12 point, bold.

b. Persons distributing such commercial handbills will maintain a listing of all premises which have notified the handbill distributor that handbills are not to be delivered to the premises. This listing shall include the address of the premises, the owner or occupant making the notification, and the date the notification was first made. This information shall be provided to the city January 1 of each year and at such other times as the city may request it.

(3) *Exemption for mail and newspapers.* The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers (as defined herein) except, that newspapers shall be placed on private property in a

plastic bag and so placed or deposited in such manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

(f) Responsibility for compliance with section. The person whose address or telephone number is listed in the handbill or who is otherwise named, described, or identified in the handbill is the person presumed to be responsible, either personally or through an agent or employee, for any violation of this section.

Section 4.02.007 Penalty.

(a) Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars (\$500.00) for each offense as provided in section 1.01.009, "General penalty for violations of code; continuing violations." Each attempted or completed act of handbill distribution or solicitation or canvassing activity shall constitute a separate and distinct offense.

(b) In case of any willful violation of any of the terms and provisions of this article, the city, in addition to imposing the penalties provided in subsection (a), may institute any appropriate action or proceeding in any court having proper jurisdiction, to restrain, correct or abate such violations; and the definition of any violation as a misdemeanor shall not preclude the city from invoking the civil remedies given it by the laws of the state.

(c) The court trying a civil or criminal cause under subsections (a) or (b) shall have the right and power upon judgment or conviction of any person for violation of any of the provisions of this article to decree and to make as a part of the judgment or conviction in such cause the forfeiture of the registration certificate required by this article. When a registration certificate is forfeited in this manner, no further certificate shall be issued to that person for one (1) year from the date of judgment or conviction.

Sections 4.02.008 through 4.02.030. (Reserved)"

**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 regulations for the delivery of unsolicited circulars, newspapers or any such unsolicited printed materials to the owner or tenant of private premises within the city limits of the local jurisdiction 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**

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); 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.

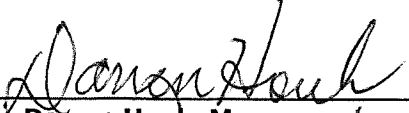
**SECTION 6.
PUBLICATION**

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**

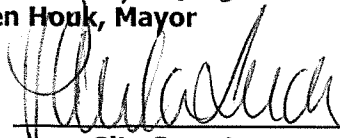
This Ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED THIS THE 16th DAY OF JULY 2024.



Darren Houk, Mayor

ATTEST:



City Secretary
City of River Oaks