

ORDINANCE NO. 610-02

AN ORDINANCE PROHIBITING THE DISCHARGE AND REGULATING THE DISPLAY OR BRANDISHING OF ANY KIND OF FIREARM, REPLICA FIREARM, GUN, PELLET GUN, PAINT BALL GUN, OR BB GUN WITHIN THE CITY, WITH EXCEPTIONS; PROVIDING REGULATIONS REGARDING THE LIABILITY OF PARENTS FOR DISCHARGE OF SUCH FIREARMS BY MINORS; REPEALING ORDINANCE NO. 361; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of River Oaks (the “City”) 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;

WHEREAS, City Ordinance No. 361, currently prohibits the discharge of firearms, air guns, or pellet guns within the City limits, for the safety, health and welfare of the citizens of River Oaks; and

WHEREAS, the City Council deems it necessary to repeal Ordinance No. 361 and to adopt additional regulations prohibiting the discharge or display of any type of firearm within the City to promote the health, safety, and welfare of the citizens of the City and the public in general.

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

Section 1. DEFINITIONS.

“Firearm” means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance, by means of compressed air, compressed gas, springs, or any other means capable of discharging shots, cartridges, pellets, missiles, projectiles or any object, or any device readily convertible to that use. Firearms specifically include, but are not limited to the following:

1. Rifle;
2. Shotgun;
3. Automatic rifle;

4. Revolver;
5. Pistol;
6. Handgun;
7. Sawed-off shotgun;
8. Air gun;
9. Pellet gun;
10. Paintball gun;
11. BB gun; and
12. Spring gun.

“Replica firearm” means any object or device that is a toy version or facsimile of, or is reasonably likely to be perceived as, a pistol, revolver, shotgun, rifle, or other firearm.

SECTION 2. DISCHARGE OF FIREARMS PROHIBITED.

- (a) A person commits an offense if the person discharges any kind of firearm, or other weapon designed for the purpose of firing or discharging a shell, cartridge, or projectiles of any kind, regardless of whether the shell or cartridge is blank or live ammunition, within the City.
- (b) It is a defense to prosecution under this Section that:
 1. the person was a law enforcement peace officer acting in the performance of his or her official duty;
 2. the person was at a shooting range operated by the United States Government, the State of Texas, or a political subdivision of the State, or which is privately operated if approved by the River Oaks Police Department;
 3. the person was using blank cartridges for a show or theatrical production, or for signal or ceremonial purposes in athletics or sports, or by a military organization;
 4. the person discharged the weapon in the protection of life or property as defined in the Penal Statutes of the State, so long as such discharge was not done in a reckless or negligent manner; or
 5. the person was participating in an amusement arcade or paint ball amusement facility or event specifically authorized or permitted by the City.

SECTION 3. REPLICAS FIREARMS.

- (a) A person commits an offense if he or she displays or brandishes a replica firearm within the City in a manner or under circumstances that cause another person to:
 - 1. reasonably believe that the replica firearm is actually an operable firearm; and
 - 2. fear imminent bodily injury from a firearm.
- (b) It a defense to prosecution under this section that:
 - 1. the person was a law enforcement peace officer acting in the performance of his or her official duties;
 - 2. the person was at a shooting range operated by the United States Government, the State of Texas, or a political subdivision of the State, or which is privately operated if approved by the River Oaks Police Department;
 - 3. the person was using blank cartridges for a show or theatrical production, or for signal or ceremonial purposes in athletics or sports, or by a military organization;
 - 4. the person discharged the weapon in the protection of life or property as defined in the Penal Statutes of the State, so long as such discharge was not done in a reckless or negligent manner; or
 - 5. the person was participating in an amusement arcade or paint ball amusement facility or event specifically authorized or permitted by the City.

SECTION 4. LIABILITY OF PARENTS.

- (a) No parent or any other person having legal control or custody of any child under the age of seventeen (17) years shall allow or permit such child to discharge, display or brandish any kind of firearm or replica firearm within the City.
- (b) A violation of this Section by any child under the age of seventeen (17) years shall be prima facie evidence of the guilt of the parent or person having legal control or custody of such child.

SECTION 5.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of River Oaks, 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. Ordinance No. 361 is hereby specifically repealed.

SECTION 6.

It is hereby declared to be the intention of the City Council that the phrases, 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 7.

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 not more that Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 8.

All rights and remedies of the City of River Oaks are expressly saved as to any and all violations of the provisions of this ordinance, or any other ordinances relating to firearms that 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 9.

The City Secretary of the City of River Oaks is hereby directed to publish in the official newspaper of the City of River Oaks, the caption, penalty clause, publication clause and effective date clause of this ordinance one (1) time within ten (10) days after the first reading of this ordinance as required by Chapter 7, Section 4 of the Charter of the City.

SECTION 10.

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 14TH DAY OF MAY, 2002.

/s/ JACK G. ADKISON
MAYOR

ATTEST:

/s/ BONNIE GIBBS
CITY SECRETARY